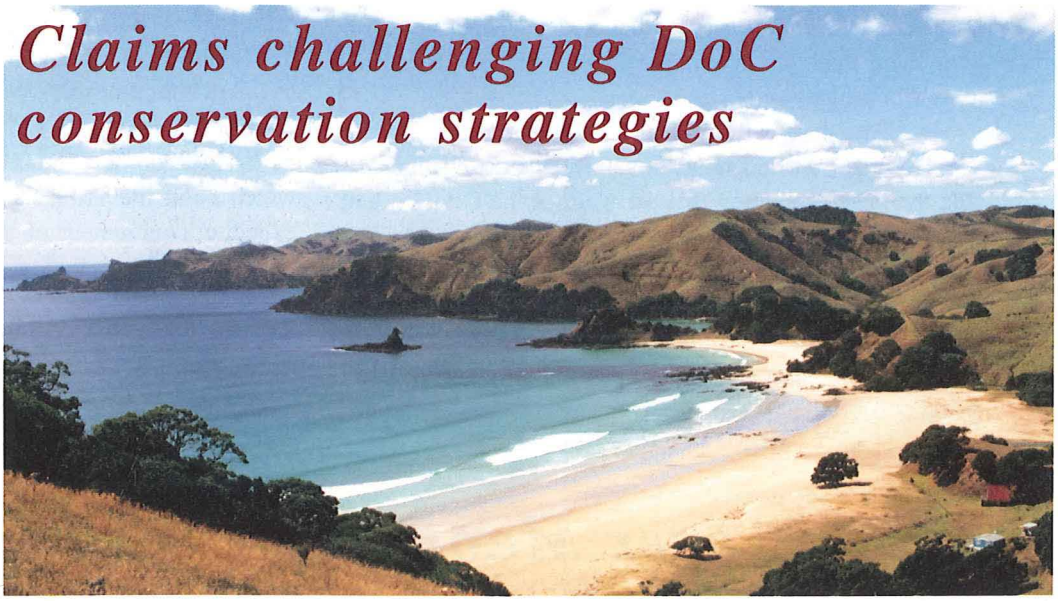
TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

TE MANUTUKUTUKU

Pipiri/Hōngongoi 1995 | Number 34 | June/July 1995

Claims challenging DoC conservation strategies



A bay near Taemaro in Te Tai-tokerau.

Three recently lodged claims submitted to the Tribunal share a common theme: strategy documents prepared by the Department of Conservation fail to give effect to Treaty of Waitangi principles. As a result, claimants are likely to be prejudicially affected.

Under section 17D of the Conservation Act 1987 the Department of Conservation is required to prepare conservation management strategies. The strategies set out 10 year management directions for conservation of land and natural and historic resources.

The three claims submitted are Wai 480, Wai 510 and Wai 515.

Wai 480 relates to the Tongariro/Taupo Conservancy draft Conservation Management Strategy and has been submitted by representatives of Ngati Tuwharetoa, who claim to represent the Tongariro area.

Wai 510 claimants, Anaru Kira and the Whakarara Maori Committee in Te Tai-tokerau state that the draft Te Tai-tokerau Conservancy Conservation Management Strategy will detrimentally affect taonga and other interests significant to Te Rohe o Whakarara. They also allege that the draft Strategy overrides their right to exercise tino rangatiratanga and act as kaitiaki over land and natural resources.

Wai 515, submitted by claimant Wilfred Peterson, also relates to the Te Tai-tokerau Conservancy Plan.

The Ngati Tuwharetoa claimants and the Crown have agreed to establish a working party to resolve the substantive issues behind the objections to the Tongariro/Taupo Conservation Management Strategy.

Ngati Tuwharetoa claimants and the Crown have agreed to establish a working party to resolve the substantive issues behind the objections.

If the working party fails to reach an agreement, the claim will be referred back to the Tribunal to consider the granting of an urgent hearing.

The Tribunal has proposed that a joint working party similar to the Tongariro one be convened for the Te Tai-tokerau claims. It would be made up of the Wai 510 and Wai 515 claimants, Department of Conservation and Crown Law office representatives.

The Tribunal also proposed that other iwi authorities in Te Tai-tokerau be invited to participate in the joint working party process.

All three claims are to be grouped together and consolidated under Wai 510.

CONTENTS

From the Director ...

Tēnā koutou. The end of the financial year marks the end of the association of the Waitangi Tribunal and Division, which services the Waitangi Tribunal, with the Department of Justice.

From 1 July the Waitangi Tribunal Division will form part of the new Department for Courts, which will encompass all tribunals and courts.

In effect there will be little change for claimants and the Tribunal's work. I hope, however, that the change will end the false perception that the work of the Division and the Tribunal has been compromised because the Department of Justice was also responsible for the Treaty of Waitangi Policy Unit, now the Office of Treaty Settlements. There has always been a clear separation between the operational arm and those sections charged with delivering policy advice to the Minister.

Another milestone of a kind was achieved in June when the Tribunal heard the last claimant submissions on Taranaki raupatu and ancillary claims. The Tribunal is still open to written submissions from several claimants and third parties. Further research work needs to be done for the Taranaki claims, and a team of Tribunal researchers is trying to complete this as soon as possible.

The Tribunal has asked the Crown to file a statement of its position on the Taranaki claims by the end of July, at which point the Tribunal may issue an interim report to expedite a settlement of the main claims. This report, if issued, would hopefully go out by the end of the year.

Noho ora mai.

Buddy Mikaere
Director

Claims over Maori reserved land – Wellington Tenths Trust

Two of the Pipitea Street properties - numbers 13 and 15.

Hearings on the Wellington Tenths claim are to resume on 21 August. While this latest round of hearings should bring the claim to finality, it may also sharpen the focus of Government proposals to settle questions on Maori reserved land.

In June last year the Tribunal agreed to an urgent hearing of claims on the leasing of Wellington Tenths land on Pipitea Street, in the capital's central business district, and Russell Terrace in suburban Newtown. Claims about the leases are part of a wider 1987 claim to the Waitangi Tribunal concerning, amongst other things, the leasing of Maori reserved lands.

The claimants, the Wellington Tenths Trust, said that commercial and government leaseholders had made substantial gains from the cheap rentals. Rents for the properties had been set at only four percent of the land's unimproved value, reviewable at 21-year intervals with the land leased in perpetuity.

The Trust calculated that it had been denied income of up to $977 million over the last 90 years on the properties that are the subject of the urgent claim alone.

In March 1995 Government decided that its own Pipitea Street leases would be returned to the Trust at some time, with negotiations already underway to consider exchanging the Russell Terrace properties for surplus army base land at Fort Dorset.

The Government responded earlier this year when it announced that Maori reserved land leases would be terminated at the end of the current term plus a further two periods of 21 years. Market rates would be phased in between 1998 to 2001, and rents subsequently reviewed every seven years.

The Trust has said that the phase-in period is too long, and that rent reviews should begin immediately.

Te Tari Kooti Department for COURTS

Te Manutukutuku is published by the Waitangi Tribunal Division, Department for Courts PO Box 5022 Wellington
Telephone 04-499 3666 ♦ Fax 04-499 3676 ISSN 0114-717X

Production by Huia Publishers, Wellington

Removing 'memorials' from State enterprise and education lands

Current owners of land which has been transferred from the Crown to State-Owned Enterprises or educational institutions may apply to the Waitangi Tribunal for dispensation so that the land cannot be returned to Maori.

This follows action under the State-Owned Enterprises Act 1986 and the Education Act 1989 where Government transferred ownership of some Crown land to SOEs and educational institutions.

This land is subject to a special notice or 'memorial' on the title for the land – this is an entry on the title for the land in the register made by the District Land Registrar. The land is liable to 'resumption' by the Crown where it can take back land and return it to Maori ownership.

Current owners of this land may apply to the Waitangi Tribunal to have the memorial on the Certificate of Title removed.

Once the memorial is removed, the land is no longer liable to be 'resumed' and returned to Maori.

Applications can be made to the Registrar of the Waitangi Tribunal under section 8D of the Treaty of Waitangi Act 1975. There is no set application form. However, forms with details of required information are available from the Registrar.

Separate applications should be submitted for each piece of land or each interest in land concerned, but one application may serve where a building, farm, subdivision or other enterprise is on more than one title.

Notice is given to claimants and Maori with an interest in the land, so the application should include information that allows these people to be identified and informed.

It may be appropriate to notify local Maori trust boards, local New Zealand Maori Council committees, district Maori committees, Maori incorporations, Maori land trusts, runanga, marae committees or other bodies representative of Maori hapu or iwi in the area concerned.

At the end of the notice period, applicants should write to the Tribunal requesting further directions. No appearance is required upon formal consideration of an undisputed application unless the Tribunal directs otherwise.

Applications, inquiries or requests for information should be directed to:

The Registrar
Waitangi Tribunal
PO Box 5022
Wellington.

WAITANGI TRIBUNAL CURRENT HEARING PROGRAMME (as at 7 July 1995)

These dates are subject to change

24-28 July Wai 449 *Kiwifruit Marketing*, Auckland
31 July – 4 August Wai 499 *Kiwifruit Marketing*, Auckland
31 July – 4 August Wai 46 *Ngati Awa*, Wellington
7-11 August Wai 32 *Chatham Islands*, Wellington
21-25 August Wai 145 *Wellington Tenths*, Wellington
4-7 September Wai 64 *Chatham Islands*, Wellington
18-22 September Wai 46 *Ngati Awa*, Whakatane
9-13 October Wai 411 *Tarawera Forest*, Kawerau
30 October – 3 November Wai 55 *Te Whanganui-a-Orotu*, Wellington
13-17 November Wai 64 *Chatham Islands*, Wellington
20-24 November Wai 46 *Ngati Awa*, Kawerau
4-8 December Wai 64 *Chatham Islands*, Wellington
11-15 December Wai 64 *Chatham Islands*, Wellington
18-22 December Wai 46 *Ngati Awa*, to be advised

Waitangi Tribunal reports database available on Internet

The text of all Waitangi Tribunal reports is now accessible in an electronic format. Most of the work for this project was completed by Te Puni Kokiri. A reports database has been constructed using sophisticated 'Topic' software which works in a Windows environment.

It is possible to search in any of the reports for the occurrence of a word or expression. A mouse is used to navigate through the database to retrieve the relevant piece of text, which can then be printed out.

The database will be available in future online through the 'Knowledge Basket Facility'. This is a connection through Internet to the worldwide web. It is free to users who want basic details on the Waitangi Tribunal, although there is a charge for gaining access to reports and more comprehensive information.

For more information contact:

Electronic Text
Telephone 09-846 6454
Fax 09-846 6432.

Chathams claims continue

Hearings of the Chatham Islands claims which began in May 1995 are expected to be completed in December this year. There are three Moriori claims (Wai 64, Wai 308, and Wai 417) and three claims from Ngati Mutunga o Wharekauri (Wai 65, Wai 181, and Wai 460). The following article looks at some of the issues raised so far.

Moriori have argued that the Crown's failure to take active measures to free them from slavery during 1842-1863 has had a permanent effect on their social, cultural and economic position on the Chatham Islands. The Crown response has been that it could not have intervened before the late 1850s, that it did take effective action in 1858, and it also raised the question of whether it ought legitimately to have interfered with the Maori custom of slavery under Article 2 of the Treaty of Waitangi.

Moriori submitted evidence that the Native Land Court acted improperly in 1870 by awarding 97% of the Chathams to Ngati Mutunga and Ngati Tama under the 1840 Rule. The Crown replied that the 1840 Rule was a legitimate form of deciding title, and that the Court's decision was appropriate to Maori custom of the time.

Issues surrounding the safeguarding of traditional fishing practices in Te Whaanga Lagoon on the Chathams were also raised.

The Tribunal's inquiry into the Ngati Mutunga claims began in February 1995 at Waiwhetu Marae in Lower Hutt. Te Runanga o Wharekauri-Rekohu and the Ngati Mutunga Incorporated Society have presented their evidence at three hearings.

They challenged the Crown over a number of historical matters:

- consistent failure to provide proper services to the Chatham Islands;
- failure to consult and ignoring the right of Ngati Mutunga to self-determination;
- allowing the Native Land Court to deprive many of their tipuna of land by vesting blocks of land in only ten owners;
- depriving them of their fisheries despite the unique dependence of the Chathams economy on fishing; and
- depriving them of their rangatiratanga over the Auckland Islands.

Ngati Mutunga also have a number of contemporary grievances over the modern restructuring of local government and the economy on the islands, the actions of the Department of Conservation, and the perceived risk to customary fishing and other rights over Te Whaanga Lagoon.

The Tribunal expect to complete hearing the Chatham Islands claims in December 1995.

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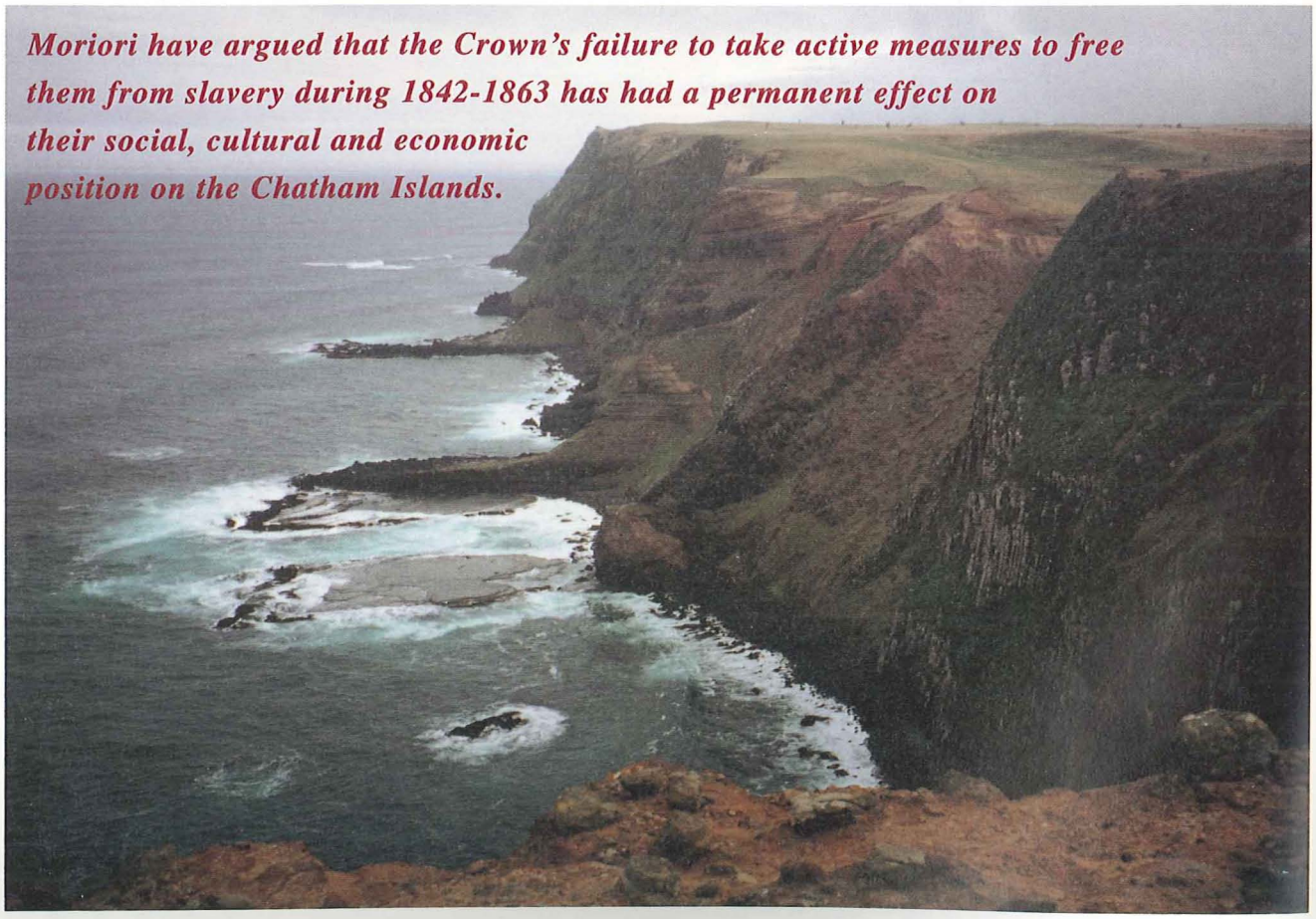


Flat rock on the Chatham Islands near the settlement of Waitangi.

Kiwifruit marketing claim – recognising Maori rights as offshore traders

Photo credit: New Zealand Herald.

Kiwifruit grower Bruce Norman, husband of claimant Marata Norman, at their farm in Te Puke.

A claim has been submitted to the Waitangi Tribunal by Maori kiwifruit growers in the hope that they will be able to market themselves as producers and export direct to kiwifruit importers instead of through the Kiwifruit Marketing Board.

The claimants, Te Puke kiwifruit growers Marata Norman and Wiremu Te Kani, state that the Primary Products Marketing Act 1953 and the Kiwifruit Marketing Regulations 1977 breach Treaty principles.

The Act provides for the establishment of marketing authorities to control the marketing of primary products, and a kiwifruit marketing authority was established under the 1977 Regulations.

Claimants say Crown actions in the marketing of the kiwifruit industry have failed to recognise Maori as offshore traders in their own right, a right they say is guaranteed under the Treaty.

The claimants state that the Crown has promoted 'single desk seller' export policies and practices and, through the New Zealand Kiwifruit Marketing Board, has tied the country to a marketing partnership in Japan with multinational importer/exporter DOLE without consideration of the interests of Maori kiwifruit growers.

These growers believe that the 'single desk seller' policy restricts the right of Maori to take control of economic matters which affect them and that this is inconsistent with te tino rangatiratanga and Article Two of the Treaty of Waitangi. The growers further claim that the current regulations governing kiwifruit exports do not take account of the special circumstances affecting Maori land, which typically has many owners.

Claimants say Crown actions in the marketing of the kiwifruit industry have failed to recognise Maori as offshore traders in their own right.

The claimants recently sought an urgent hearing on the grounds that if their rights are not determined quickly they will be locked into a structure that they do not want to be a part of and that may cause them irreparable economic damage.

Hearings of the claim end on Tuesday 1 August. The Tribunal will issue a report on the claim shortly.

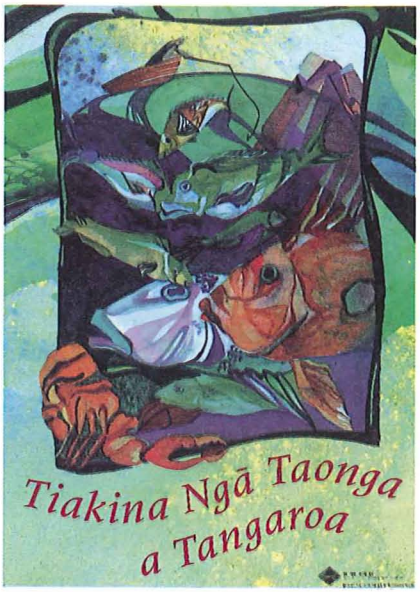
Fisheries allocation claims will be adjourned

The Waitangi Tribunal has decided it has the jurisdiction to hear claims about fisheries allocation but initial hearings of the claims have been adjourned following a High Court decision of 31 July.

The three claims being considered (Wai 447, Wai 485 and Wai 514) have raised questions about the Fisheries Commission's proposed options for allocating Maori fishing quota.

In Wai 447, northern groups oppose the mana moana model of allocation which would see a larger share of assets for southern coastal tribes.

Wai 485, brought by an urban group, concerns urban Maori having Treaty rights which they believe neither the Fisheries Claims Settlement Act nor the Fisheries Commission have considered.



Poster courtesy of Te Puni Kokiri.

Wai 514 is a claim by Te Waka Hi Ika o Te Arawa Inc who claim that the Crown policies and practices contained in the Maori Fisheries Act 1989 and the use of annual lease distribution is inconsistent with the principles of the Treaty and prejudiced to their interests.

At a hearing held on 10 May 1995 the Tribunal agreed the claimants had cause to be concerned about the process and proposals adopted by the Commission so far. Directions for further hearings were the result of both considerations.

On the question of whether to proceed sooner or later, the Tribunal believed that the matter required priority. A memorandum following the hearing pointed out that "the issues affect large numbers and have the potential to seriously divide Maori people".

Professor Sir Hugh Kawharu – A Valediction

Professor Sir Hugh Kawharu is stepping down as a Tribunal member as a result of his wife Freda's serious illness. He is one of the Tribunal's long-serving members, having been with it since 1987.

Over this time, Professor Kawharu has worked on a wide range of claims. These include Ngai Tahu, Ngawha Geothermal Resource, Rotorua Geothermal Resource, Fisheries Settlement, Turangi Township, Te Whanau-a-Waipareira and Ngati Awa.

Reflecting on all the claims, Professor Kawharu says all the grievances have been deeply and sincerely felt. However, he says claims generally can never be satisfactorily resolved until all the evidence has been thoroughly prepared and presented.

"Resources to attain that end are unlikely to be provided without public understanding and support. My wish list, therefore, has at the top of it that governments should actively promote the work of the Tribunal and its reports amongst the public."

Professor Sir Hugh Kawharu.

Professor Kawharu's wealth of experience and background has contributed greatly to the work of the Tribunal.

He is of Ngati Whatua and Nga Puhi descent and has degrees from New Zealand, Oxford and Cambridge universities.

A former head of the anthropology department at Auckland University, Professor Kawharu also held a personal chair in anthropology and Maori studies at Massey University from 1970-1984. From 1993 to the beginning of this year, he was the first director of the James Henare Maori Research Centre at Auckland University.

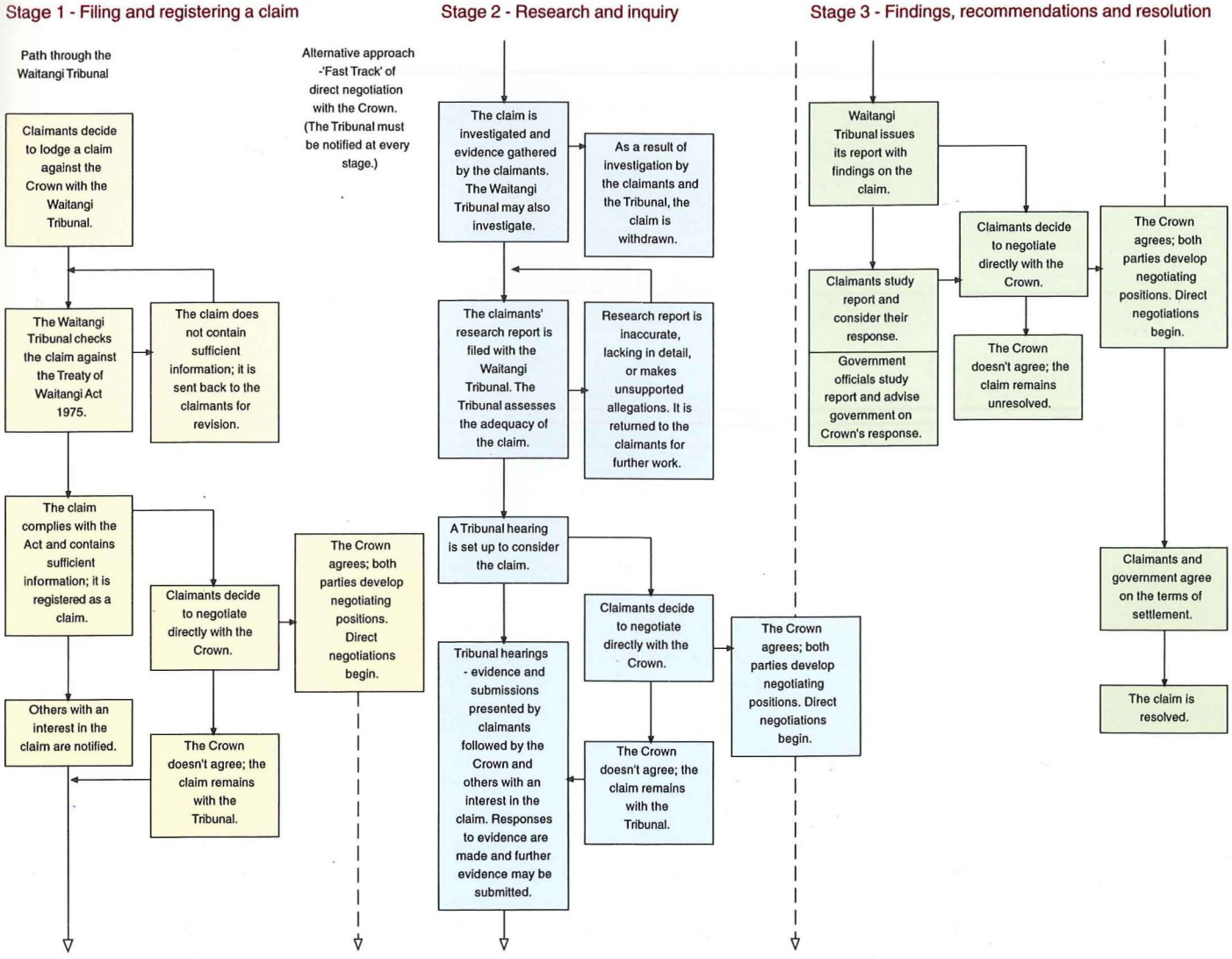
Professor Kawharu has been involved in a number of organisations: as a member of the Royal Commission on the Courts; as a New Zealand representative at Unesco conferences; and as a consultant to FAO and the NZ Maori Council.

He was first chairperson of the Ngati Whatua of Orakei Maori Trust Board, is present chairperson of the joint Ngati Whatua-Auckland City Council Orakei Reserves Board, and a Ngati Whatua delegate to National Maori Congress.

"Being a member of the Waitangi Tribunal family has been one of the most rewarding experiences of my life. Everyone I've been associated with has given of their best with pride and commitment."

NEW CLAIMS REGISTERED		
Wai No.	**Claimant**	**Concerning**
Wai 513	Anaru Kira	Northland Regional Coastal Plan, Northland
Wai 514	E Tapsell, RB Perenara, Peretini Tawa	Te Waka Hi Ika o Te Arawa – Fisheries Allocation, Aotearoa
Wai 515	Wilfred Peterson	Te Tai-tokerau/Northland Conservancy Plan, Te Tai-tokerau
Wai 516	John Ngamoa Gillies	Waingongoro Stream, Hawkes Bay
Wai 517	Wilfred Peterson	Northland Regional Coastal Plan
Wai 518	Stanley Joseph Pardoe	Surplus Crown lands, Gisborne City
Wai 519	Mac Whaanga	Mahanga 2Y and Waikokapu No. 3 blocks
Wai 520	Anaru Kira	Lands around Kerikeri, Northland (grouped with Wai 37, 421, 466)
Wai 521	Kathleen Hemi	Ngati Apa iwi lands and fisheries (consolidated under Wai 102)
Wai 522	Kevin Bluegum	Western Bay of Plenty (consolidated under Wai 215)
Wai 523	Anaru Kira	Kapiro Farm, Kerikeri (grouped with Wai 421, 466, 520)
Wai 524	Leith Comer and others of Ngati Rangitihi	Ruawahia land blocks
Wai 525	Toahaere Faulkner on behalf of Ngati Makamaka	District scheme plan by Western Bay of Plenty District Council (grouped with Wai 480, 510, 513, 515, 517)
Wai 526	Richard Reedy and Potane Reedy on behalf of the whanau of Te Ataarangi Tukino	Wharekahika Bio land block

Flow Chart of the Claim Process



PROPOSED RESEARCH AND HEARING PROGRAMMES 1995/1996

The following table is a draft proposal for research and hearing programmes over 1995/1996. Please note that the order is likely to change, especially according to claimants' readiness to proceed or following completion of the Rangahaua Whanui research project. Any inquiries about the programmes should be directed to the Registrar, Waitangi Tribunal.

Region	Wai Nos.	Researchers	Information Needs	Hearings
Taranaki Raupatu	54, 99, 126, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 151, 152, 456	Suzanne Woodley, Aroha Waetford, Giselle Byrnes, Ben White, Heather Bassett	Area of land, boundaries, impact of the confiscation, representation issues, etc	June 1995
Tauranga Raupatu	42, 47, 86, 159, 162, 208, 209, 210, 211, 215, 227, 228, 266, 336, 342, 353, 356, 360, 362, 365, 370, 383, 465, 489, 497, 503	Roimata Minhinnick, another to be assigned	Confirm groupings of all claims under Wai 215	February 1996
Urewera	36 (master file), 40, 66, 144, 212, 333, 481, 509	Anita Miles	To be determined	December 1996
Te Puke	164 (Geothermal), 296, 325, 336, 368, 471	Aroha Waetford	Consolidate all claims and determine current state of research	July 1996
Northern South Island	44, 56, 102 (master file), 104, 124, 184, 207, 220, 379, 469, 482	Grant Phillipson	Determine current state of research Research on ancillary claims	January 1996
Northland/Hokianga to Kaipara	82, 106, 121, 128, 188, 229, 249, 250, 271, 273, 294, 303, 341, 403, 450, 452, 468	Rose Daamen	Determine state of current research	December 1996

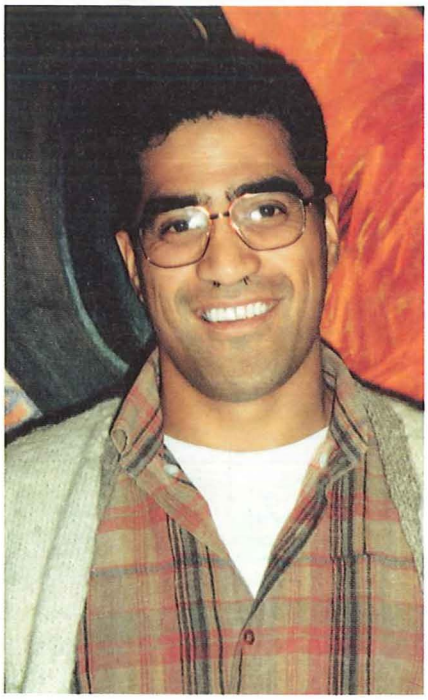
Welcome to new Waitangi Tribunal researcher

Roimata Minhinnick

The most recent researcher to be taken on by the Waitangi Tribunal is Roimata Minhinnick, Ngati Te Ata of Waiohua and Tainui.

Since graduating from the University of Waikato with an LLB in 1994, Roimata has worked freelance on a wide range of historical and legal research.

Roimata is an ongoing tribal representative to the United Nations, and he lists his other interests as people, Treaty of Waitangi jurisprudence and singing in the shower.



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Te Manutukutuku

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PUBLICATIONS

WAITANGI TRIBUNAL PUBLICATIONS

The Waitangi Tribunal has published many reports, resource kits and research information. These include: reports on specific claims, occasional publications on issues, and research reports. A list of publications is available from the Communications Manager, Waitangi Tribunal, PO Box 5022, Wellington.