TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

TE MANUTUKUTUKU

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Te Whanau o Waipareira Report Released

The Waitangi Tribunal's *Te Whanau o Waipareira Report* was released in Auckland on 6 July 1998.

Te Whanau o Waipareira, a non-tribal Māori community based in West Auckland, established a Trust to provide effective social services, and to lead the community's efforts to help themselves. On 11 January 1994, Haki Wihongi, Chairman of the Waipareira Trust, lodged a claim with the Tribunal. The claim alleged that the Community Funding Agency (CFA) of the Department of Social Welfare had not treated the Waipareira Trust as a Treaty partner.

The *Waipareira Report* upholds Te Whanau o Waipareira's claim that they were prejudiced by policies and operations of the CFA. In examining this claim, the Tribunal identified problems with how the Treaty relationship should apply to each party in this claim.

The Tribunal said it was important to read all parts of the Treaty together in order to understand it, instead of trying to interpret the separate articles and words of the texts. It rejected the argument that only 'traditional iwi' are the Crown's Treaty partners, saying the Treaty was for the protection and benefit of all Māori.

The Tribunal found that if a Māori community exercised rangatiratanga, then it deserved special recognition in terms of the Treaty of Waitangi. Rangatiratanga, in this case, was described as 'the reciprocal relationship between leaders and members of a Māori community, tribal or otherwise'. Te Whanau o Waipareira is one non-tribal community which clearly exercises rangatiratanga and in the welfare context it should be consulted by the Crown on matters affecting its interests.

The Tribunal also found that the Treaty partnership makes the Crown accountable to Māori for the outcomes of its social and welfare policies. The Crown needs to coordinate its dealings with Māori groups much better. Waipareira's efforts to provide integrated and coordinated programmes were frustrated by having to deal with many different Crown agencies, each with its own policies and procedures. This undermined the community's rangatiratanga, and diminished the quality of kāwanatanga.

The *Waipareira Report* recommends an approach to social policy that protects and strengthens all Māori communities which exercise rangatiratanga; better consultation and a greater devolution of decision-making power and resources to Waipareira in particular; and greater reporting of the outcomes for Māori of the government's social policies.

Tribunal Director Morris Love presents the report to claimant Jack Wihongi

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From the Director

The 'Iwi Thesis' and Rangatiratanga

With the release of *Te Whanau o Waipareira Report*, the Tribunal has reiterated that Māori are the Crown's Treaty partner, not iwi, hapū and whānau.

Although the *Waipareira Report* focuses on the Community Funding Agency (CFA) of the Department of Social Welfare, the principles developed have wider implications. The Government's policy position, developed since the release of *Te Urupare Rangapu* (1989), has been to focus on rangatiratanga being the sole preserve of 'iwi'. This policy became known in some circles as the 'iwi thesis'.

The Runanga Iwi Act (1990) sought to provide the ability to create a representative tribal rūnanga, or council. The Act was repealed in 1991, before any rūnanga were established. Instead, types of rūnanga were formed throughout the country, often as Incorporated Societies or Charitable Trusts. Few followed the Runanga Iwi Act process to establish verifiable representation. Many government departments who had to deal with tribal (or other) groups saw bodies with the name 'rūnanga' as being the representative body for the 'iwi'. Most gave little or no recognition to non-tribal bodies, although 'taura here rūnanga' also formed at this time.

At the time of the devolution policy, groups such as 'Te Iwi Mōrehu', from the Ratana Church, tried firstly to become 'iwi' and later to become 'iwi-like'. As they exercised rangatiratanga with respect to a group of Māori who were not necessarily kin, I suspect that they sought a relationship with the Crown. They knew that if such a relationship were recognised then government funds could be devolved to them.

Exercising Rangatiratanga

The Tribunal found that Te Whanau o Waipareira Trust was a body that exercised rangatiratanga on behalf of a Māori community in West Auckland. CFA has directed its policy at what it deems to be 'iwi' with a view to establishing iwi social services as defined in the Children, Young Persons, and Their Families Act (1989). The Tribunal is recommending that this term be changed to 'Māori social services'. The Tribunal saw little conflict with local iwi in that they serve different communities of interest.

Who then are the Māori Treaty partners? The key to answering this question is gained by looking carefully at rangatiratanga.

Rangatiratanga exists between a Māori community and its leadership. It includes a set of reciprocal duties and responsibilities. With Waipareira, the Tribunal saw 'leadership acting not out of self-interest but in a caring and nurturing way with the people close at heart, fully accountable to them and enjoying their support'. There is not a formula or set of criteria which identifies these groups, but identification should be made on a case-by-case basis.

The notion that Māori are the Crown's Treaty partner, and that Māori are not simply described or represented by iwi, hapū and whānau, could mean a shift in all Treaty analysis. The extension of this case to other purposes is one of great interest to many. The Tribunal has had to develop a set of principles to look at particular circumstances.

The Tribunal recommended that the Government, in its policies, practices and protocols, should aim to apply the principles of the Treaty of Waitangi to protect the rangatiratanga of all Māori in contemporary situations, kin-based or non-kin based, where the facts of any particular case reveal the exercise of rangatiratanga. What should also be looked at carefully is that the rangatiratanga relationship described by the Tribunal between the community and its leadership applies equally to iwi groups who also exercise rangatiratanga.

Outcomes

The Waipareira report also moved thinking on government funding criteria from the 'output-based' approach of 'counting bed-nights' to an outcome based approach. The Tribunal saw that a shift was required to devolve sufficient authority and resources to enable Te Whanau o Waipareira to undertake a coordinated and holistic approach to community development. While devolving this responsibility it is clear there is an accountability back to the CFA.

However, there appears to be no clear consensus view in the whole Treaty settlement are as to what a set of outcomes are from claim settlements. Many believe Treaty settlements that return land and resources should provide a welfare outcome for those entitled to benefit. For others the settlements are simply compensation and no other expectations should be attached. Given the current debate it may be an appropriate time to talk about this broader issue in a more open way.

Morris Te Whiti Love
Director

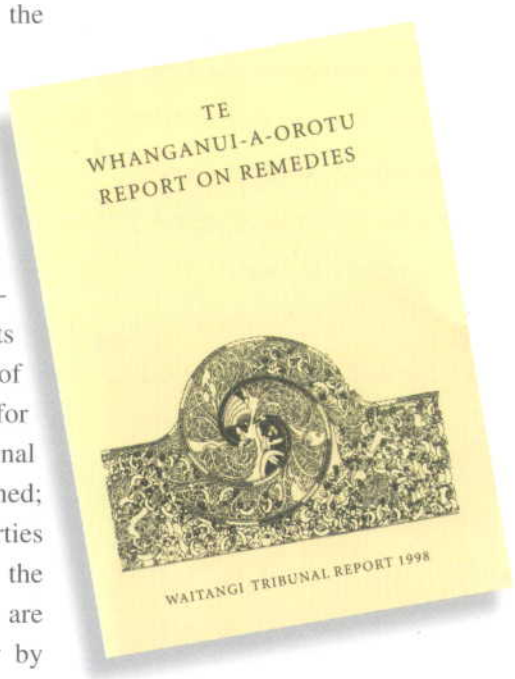
Te Whanganui-a-Orotu Report on Remedies Released

***Te Whanganui-a-Orotu Report on Remedies* was released on 5 June 1998. It confirmed most of the suggested recommendations set out in the Tribunal's 1995 *Te Whanganui-a-Orotu Report*, which had ruled that the claim to Te Whanganui-a-Orotu was well founded and that the Crown had breached Treaty principles in several instances.**

The Tribunal preferred that the Crown and claimants negotiate a settlement. It proposed that the 1321-hectare Landcorp Farm, located at the northern end of the former Te Whanganui-a-Orotu lagoon, 'should be returned to the claimants' along with the Crown-owned Ahuriri Estuary, in conjunction with the development of a new regime for its management.

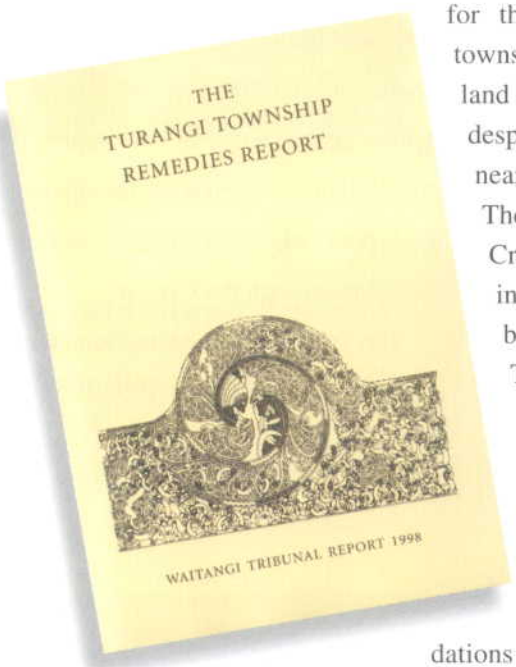
The Tribunal also supported in principle the joint management of the Hawke's Bay Airport by the claimants and the local authorities, recommending that the Crown's half-share in the airport form part of the negotiations.

Also included in the *Remedies* report are recommendations that the claimants receive a 'substantial fund' of money in part compensation for the loss of land that the Tribunal cannot recommend to be returned; that other Crown-owned properties in the claim area form part of the negotiations; that the claimants are constituted as a hapū authority by special legislation; and that several amendments be made to the Resource Management Act (1991) and other Acts.



Tribunal Exercises Binding Recommendations

On 8 July 1998 the Tribunal issued its *Turangi Township Remedies Report* for the claim of the Ngāti Turangitukua hapū to land in Turangi.



The land under claim was used for the construction of Turangi township. The Crown acquired the land compulsorily from the hapū despite owning suitable land nearby.

The Tribunal said that the Crown had breached the Treaty in its land dealings by failing to protect Ngati Turangitukua's Treaty rights, to honour assurances and undertakings, and to act in accord with its duty of partnership.

The Tribunal, exercising its binding recommendations for the first time, ordered the return of 15 memorialised properties. The properties, including seven that are privately owned, are located in the industrial and commercial centre of Turangi. The Tribunal declined to force the return of any private residential properties, instead recommending that the Crown provide up to $700,000 worth of Crown-owned residential properties.

In addition to its binding orders, the Tribunal made non-binding recommendations for the return of 15 further Crown properties and at least $1 million in cash.

The Crown and the claimants now have 90 days to negotiate a settlement before the binding orders became effective.

Urgent Tenths Hearing Held

On 26 and 29 June an urgent hearing was held for the Wellington Tenths claim. The Tenths Trust requested the hearing to try and stop the sale of GPS assets, including Bowen House, Bowen State Building, Freyberg Building, Defence House, William Clayton Building, Saint Paul's Square, State Services Building, Vogel Building and Charles Fergusson Building.

Under the Government's plan for a public share float of GPS, the buildings would be sold off. The Trust claimed that the Crown had breached the Treaty of Waitangi by failing to consult properly. It contended that the buildings could be used in settling its land claims.

Crown counsel Helen Aikman told the Tribunal that though the government had consulted the Trust and offered to consult other Māori groups over the sales, it did not have a legal or Treaty obligation to do so. The interests of the claimants would be protected by memorials attached to the property titles, ensuring the buildings could still be used in a settlement once they had passed into private hands.

Despite the Trust's fears over reported comments by Treaty Settlements Minister Doug Graham, the Government was not planning any review of the memorial system. Mr Graham had merely said a review might be needed if the Tribunal made inappropriate use of its general powers to order the return of memorialised lands, said Ms Aikman.

Kaipara Inquiry Update

The Tribunal sat for two and a half days on 15–17 June at Otamatea, the marae mātua of Te Uri o Hau, to hear the stage one claimants' closing submissions.

David Williams, counsel for Te Uri o Hau o te Wahapu o Kaipara (Wai 271), Te Uri o Hau ki Otamatea (Wai 227) and Harry Pomare (Wai 294), made lengthy submissions for the groups. At the end of the claimants' respective submissions, the Tribunal cross-examined Mr Williams for some time.

The Crown will not make closing submissions until the conclusion of stage three of the Kaipara inquiry.

On the 18 June, the Tribunal held a judicial conference to consider whether it should make an Interim Report at this stage of the inquiry. Mr Williams argued that his clients needed the report in order to begin negotiations with the Crown.

The Tribunal is expected to make a decision on 21 August 1998.

Wai 262 Update

The Tribunal sat at Paparore Marae near Kaitaia on 22 and 23 June 1998 to hear kaumātua evidence from Ngāti Kuri claimants in the Indigenous Flora & Fauna claim. The Tribunal heard from six Ngāti Kuri witnesses, including claimant Haana Murray. On Wednesday 24 June the Tribunal conducted a site visit around the Ngāti Kuri rohe, from Paparore north to Maungatohoraha, Parengarenga Harbour, Te Kokota sands, Te Hapua, Te Rerenga Wairua and Te Oneroa a Tohe/Ninety Mile Beach. The next sitting will be to hear Ngāti Porou claimants at Pakirikiri Marae, Tokomaru Bay, from 10 to 14 August.

Te Rerenga Wairua, the departing place of spirits.

Ngāti Kuri claimant Haana Murray (in white top) explains the significance of Te Rerenga Wairua to Tribunal members, Crown representatives and others.

Tribunal member Bishop Manuhuia Bennett 'walks on water'.

Iwi Launched

***Iwi: The Dynamics of Maori Tribal Organisations*, by Angela Ballara, was launched recently at Parliament. Chief Judge Durie spoke at the launch. He noted how the book raised key points about current Māori disputes, in particular, the nature of Māori communities today, and the place of urban communities.**

Iwi describes how hapū had the primary role in Māori society, each acting independently with a sovereignty of their own while enjoying obligations and connections to others. Ballara describes the dynamic by which hapū formed and unformed or shifted about, and how they related to one another through descent and allegiance. She emphasizes the traditional primacy of local, community autonomy.

Judge Durie questioned whether modern-day constructions of 'iwi' are the appropriate bodies to exercise control at the local level. 'Larger collectives may be needed today, but if Ballara is right, these should be seen as cooperatives or federations, and not as bodies to exercise an inordinate control over the lives of the people of the communities that they serve.'

That is not to say that there is no place for 'the modern iwi supertribes', but they need to be put into perspective and this book 'provides a caution against some modern constructions that could take the essence out of Māori society.'

Ballara's book points out that, as a regularly functioning unit of management, 'iwi' are comparatively modern. She considers that European officials gradually used the word 'tribe' for groups larger than the hapū, often for convenience of administration. Ethnologists took up the official practice and created a fixed hierarchy of tribes and subtribes, or respectively, iwi and hapū, which Māori then took on board.

Judge Durie warned that '[t]here is a danger that official perceptions will continue to impose on how Māori matters are managed. For example, the Court of Appeal introduced to law the analogy of partnership to describe responsibilities between Māori and the Crown. Now, officials say, a partnership exists between the Crown and iwi (exclusively). This is questionable in terms of Māori tradition. It is also questionable in terms of what the Court of Appeal actually said.

> '[T]he essence of Māori society lies not in the structures that are built, but in the values that are passed on. When structures are set up to exclude people, or to force people into tribal divisions, the old values about relationships, inclusiveness and respect for all are put at risk, and new monoliths come in that may ultimately destroy the cultures they were meant to maintain.

'This book is likely to be controversial, but the controversy will be one that Māori, and many New Zealanders, especially officials, need to have.'

Judge Durie

Chief Justice appointed to the High Court

Chief Judge Durie has been appointed to the High Court. The judge will remain chairman of the tribunal but will no longer be chief judge of the Māori Land Court. That change will require an amendment to the Treaty of Waitangi Act. The Act stipulates that the tribunal chair must also head the Māori Land Court. The appointment will take effect in October, with the chief judge spending half his time sitting in the High Court and half in the Waitangi Tribunal. Judge Durie is the first Māori appointed to the High Court.

Library Wing Dedicated

A tribute was recently paid to former librarian Brett Sinclair, who was killed in a car accident over a year ago.

A wing of the Tribunal's recently refurbished library was dedicated to Brett. The wing features a plaque and photograph in his memory. Bishop Bennett unveiled the plaque in the presence of about 30 members of Brett's family.

Bishop Manuhuia Bennett (left) with Jim Sinclair, Brett's father.

Pre-emption Report Available

Rose Daamen, a member of the Tribunal's research staff, has recently completed a report for the Rangahaua Whānui project on Crown pre-emption (the sole right to purchase land from Māori).

Daamen examines the early years of pre-emption, and considers how the policy was supposed to both protect Māori interests and make money to pay for colonisation. The report also focuses on Governor FitzRoy's waiver of pre-emption in the 1840s, which resulted in 250 settler purchases of land directly from Māori (almost all in the Auckland region). Daamen looks at the effectiveness of mechanisms set up to ensure fair play for Māori in these transactions, and later government inquiries into the purchases. The report will be of particular interest to Auckland claimants.

Claimants and interested parties may obtain a copy of the report from:

Jo Ara, Waitangi Tribunal,
PO Box 5022,
Wellington,
tel: 0-4-499 3666.

Copies cost $10.00 each.

NEW CLAIMS REGISTERED

Wai No.	Claimant	Concerning
709	Marna Kathleen Dunn and another	Section 3A Block XIV Tautuku Survey District (Chaslands Mistake)
710	Makere Harawira	Waitaha (Ngai Tahu Settlement)
711	Peter Tukiterangi Clarke and others	Tauhara Middle No 4 Block (Rotoakui Reserve)
712	Kahi Takimoana Harawira	Nga Puhi Nui Tonu Property Rights
713	James Reweti Andrews	Patea Township and Lands
714	Hone Tiwaewae Williams	Ngati Koi Reserves & Hauraki Blocks
715	Jackson Junior Ropiha White	Matakana Island Succession
716	Pauline EuniceTangiora	Gas & Oil Resources (Rongomaiwahine)
717	Matire Duncan and others	Nga Potiki Hapu Estate (Tauranga)
718	Rongo Herehere Wetere	Wananga Maori Education Funding
719	Lionel Wilfred Brown	Kaipara Lands & Resources
720	Tamatehura Nicholls	Mahurangi-Omaha (Hauraki Gulf)
721	Te Uira Mahuta Hone Edwards (John Edwards)	Ngati Tahinga Ki Kaipara Land & Resources
722	Una Hyland and others	Takapuwahia and Other Blocks (Public Works)
723	Janice Mary Manson	Ngati Tama Manawhenua Ki Te Tau Ihu Land and Resources (Nelson Region)
724	Roland Steven Mason	Murupara Section and Rating Powers Act 1988
725	Hiraina Ngatima Hona	Te Pahou Blocks, Te Whaiti
726	Janet Carson and another	Ngati Haka and Patuheuheu Lands, Forests and Resources (Urewera)
727	Ropata Bob Leef and others	Pirirakau-Maungapohatu Land and Resources (Tauranga)

HEARING SCHEDULE as at 1 April 1998
(These dates may change)

29–31 July 1998, Taupo Mohaka ki Ahuriri claims	**28 September–2 October 1998, Wellington** Wellington Tenths Claims
10–14 August 1998, Tokomaru Bay Indigenous Flora & Fauna claim	**12–16 October 1998** Hauraki claims
24–28 August 1998, Wellington Wellington Tenths Claim	**27–30 October 1998** Hauraki claims
14–18 September 1998, Paeroa Hauraki claims	**9–13 November 1998** Tauranga claims

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