

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

TE MANUTUKUTUKU

Kia puta ki te whai ao ki te ao mārama

From the world of darkness moving into the world of light

Issue 66



Waitangi Tribunal

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The National Park Report



Andrew Gregg

Chief Judge Wilson Isaac and Sir Tumu Te Heuheu at the National Park report handover

MORE than 200 attendees from Ngāti Tūwharetoa, Ngāti Rangī, and Whanganui iwi celebrated as the Waitangi Tribunal handed over *Te Kāhui Maunga: The National Park District Inquiry Report* at an emotionally charged ceremony at the Chateau Tongariro on 12 November 2013.

The three-volume report concerns the creation and management of the Tongariro National Park and the establishment and operation of the Tongariro power development scheme.

The Tribunal panel, comprising Chief Judge Wilson Isaac, Professor Sir Hirini Mead, the Honourable Sir Doug Kidd, and Dr Monty Soutar, were all delighted

to be present at the handover. Sir Doug remarked on what an extraordinary and privileged experience it was for the panel to hear evidence that the claimants had never made public before.

In his speech, the ariki Sir Tumu Te Heuheu, the eighth paramount chief of Tūwharetoa, expressed his satisfaction that the Tribunal had confirmed his peoples' understandings of his great-great-grandfather's intent: that the tuku by Horonuku Te Heuheu in 1887 of the mountain peaks of Tongariro, Ngāuru-hoe, and Ruapehu to the Crown was an offer of partnership, with the Queen as joint trustee and custodian of the mountains. □

From the Chairperson

TĒNĀ KOUTOU. As we at the Waitangi Tribunal position ourselves to inquire into and report on the remaining claims in our district inquiry programme, it is important to set strategic goals for our future work.

Our first and most important goal over the next few years is the completion of the remaining district inquiries. This will be a major contribution to the hearing and resolution of Māori grievances and the settling of historical Treaty claims, which is of immense importance to Māori, the Crown, and New Zealand in general.

Beside this work, this year we intend to start a new inquiry programme that will schedule hearings of the kaupapa (non-land based) claims filed with us. We have heard such claims in the past where claimants successfully sought an urgent inquiry, such as the recent Wai 262 (flora and fauna and indigenous knowledge), freshwater and geothermal resources, and kōhanga reo



Chief Judge Wilson Isaac

inquiries, but now is the time to put in place a programme which will progress all such claims towards hearing. We are committed to ensuring that in the first six months of this year we will begin the work required to commence this kaupapa inquiry programme.

As well as completing the historical inquiries and starting our kaupapa inquiry programme, we must continue to deal effectively with urgent claims

when filed, as parties seek to be heard on issues concerning contemporary Crown actions, policies, and processes.

As we complete our district inquiries and reports, the balance of the Tribunal's resources will continue to shift to the hearing of kaupapa and contemporary claims, along with those historical land-based claims not inquired into as a part of the district inquiry programme. By 2020, we plan to transition our focus from district-based historical inquiries primarily to the kaupapa and contemporary claims. This transition will continue to sustain the fundamental values of the Waitangi Tribunal as an instrument and forum for honouring the Treaty of Waitangi and adding value to the Māori–Crown relationship.

A handwritten signature in black ink, appearing to read 'Wilson Isaac'.

Chief Judge Wilson Isaac
Chairperson



From the Acting Director

TĒNĀ KOUTOU. The year 2013 has been a very productive year for the Waitangi Tribunal Unit. It has seen a number of active hearings progressed in the Te Rohe Pōtae and Te Paparahi o te Raki district inquiries and the release of a number of pre-publication and final reports, notably *Matua Rautia: The Report on the Kōhanga Reo Claim* and *Te Kāhui Maunga: The National Park Report*.

I was very privileged to be able to attend the handover of *Te Kāhui Maunga* at the Chateau Tongariro, where I had the honour of outlining to Ngāti Tūwharetoa, Ngāti Rangī, and Whanganui iwi the findings and

recommendations contained in the report. The emotional response of those iwi made it something very special to be a part of that day. The handover was the culmination of many years of hard work undertaken by the Tribunal, the unit, and iwi, and it really reinforced to me just how important the work of the Tribunal is to Māori.

Meanwhile, the unit continues to look for innovative ways to actively contribute to the Ministry of Justice's goal of reducing the time taken to deliver services to customers by 50 per cent by 2017. Work we have undertaken to contribute to this goal has included a review of processes across

all teams to identify ways to streamline activities, a trial of the use of iPads and tablets at inquiry hearings, and the redesign of the Tribunal's website and document management systems to improve claimant access to documentation for active inquiries.

A fuller review of our business processes will be factored into the Tribunal's strategic plan, which we hope to release during the first half of 2014.

Kia ora rā.

A handwritten signature in black ink, appearing to read 'Julie Tangaere'.

Julie Tangaere
Acting Director



Recent Progress in Tribunal Inquiries

FOR THE WAITANGI TRIBUNAL, the past 18 months have seen expansion and growing diversity in its work programme. In this period, the Tribunal has released five reports, advanced the writing of three more, started hearings in two large district inquiries, and progressed planning and casebook research for what are likely to be the two final inquiries in its long-running district inquiry programme. It has also considered a large number of applications for urgency and, increasingly, remedies.

District inquiries

The completion of the district inquiry programme, which commenced in the 1990s, is now within sight. The Tribunal has finished reports on 18 of the Tribunal's 37 inquiry districts nationwide (covering 76 per cent of New Zealand's land area) and is preparing, hearing, or writing reports on claims in six inquiries covering another 11 districts.

When complete, the Tribunal will have reported on claims in 29 districts (covering 91 per cent of the country's land area). Many claimants have already settled or are currently negotiating their Treaty claims with the Crown. In the remaining eight districts, iwi or hapū have or are doing so directly without a Tribunal inquiry.

Reports released

During the last 18 months, the Tribunal has focused on completing its reports on claims previously heard and has produced major reports on two district inquiries:

- ▶ In October and December 2012, the Tribunal issued parts 3 and 4 of its five-part report on the

Te Urewera district inquiry. Part 3 focused on the fate of the Urewera district native reserve, the alienation and title consolidation of Māori land, and the creation and management of Te Urewera National Park. Part 4 addressed the police raid on Maungapōhatu in 1916, the Crown's attempt to help Māori land development in the twentieth century, and Crown restrictions on Māori milling their timber (for a summary, see issue 65 of *Te Manutukutuku*, available from the Tribunal's website).

- ▶ In November 2013, the Tribunal presented *Te Kāhui Maunga: The National Park District Inquiry Report* at a ceremony at the Chateau Tongariro, attended by host iwi Ngāti Tūwharetoa, Ngāti Rangi, and Whanganui (see the story on page 1). The report covers 41 claims of ngā iwi o te kāhui maunga spanning the area of the Tongariro National Park and surrounding land (see issue 65 of *Te Manutukutuku*). *Te Kāhui Maunga* was issued

in pre-publication format in December 2012, and in response to an application from the claimants, for the final report the Tribunal further developed its findings and recommendations on historical claims concerning the Tongariro power development scheme.

The Tribunal found that the iwi retain development rights in the affected waterways and are entitled to compensation for the past and present use of their taonga to generate electricity, particularly in the case of Lake Rotoaira. The power development scheme, alongside the establishment and management of Tongariro National Park, was a central issue in the inquiry.

Reports in preparation

Three district inquiry reports are currently in preparation:

- ▶ The Whanganui land district inquiry completed its hearings in late 2009, and the writing of

The ceremony at the Chateau Tongariro for the presentation of the *Te Kāhui Maunga* report



the report is now well advanced. Following consultation with the claimants, the panel decided to focus on nine central issues in the inquiry (see issue 64 of *Te Manutukutuku*). It intends to produce its report late this year.

- ▶ The Te Paparahi o te Raki (Northland) regional inquiry is organised into two stages. The Tribunal completed its hearings in stage 1 in February 2011, focusing on Crown and Māori understandings of He Whakapūtanga o te Rangatiratanga (the Declaration of Independence) and Te Tiriti o Waitangi (the Treaty of Waitangi). Its report will be issued this year.
- ▶ The fifth and final part of the Te Urewera district inquiry report will focus on Lake Waikaremoana, the socio-economic status of Te Urewera communities in the twentieth century, and other remaining issues not previously addressed. Part 5 is due for release late this year.

Inquiries in hearing

Two large district inquiries are currently in hearing:

- ▶ The Te Rohe Pōtae (King Country) district inquiry includes some 270 claims. It is more than halfway through its hearing programme, which began at Te Tokanganui-a-noho Marae in Te Kuiti in November 2012 and is due to end with closing submissions late this year.
- ▶ The Te Paparahi o te Raki (Northland) regional inquiry embraces seven taiwhenua or sub-regions and involves some 390 claims. Stage 2, which encompasses all post-1840 claim issues, commenced at Te Tiriti o Waitangi Marae in March 2013. The hearings combine region-wide themes with local claim

issues and are planned to run in four rotations around the sub-regions through 2014 and 2015. Consultation on additional research on local claim issues concluded last December, when the Tribunal approved a programme for targeted research on particular local issues, which is now getting under way.

Inquiries in preparation

The final two inquiries in the district programme, adjacent in the southwest of the North Island, are currently in active preparation for hearing:

- ▶ The Porirua ki Manawatū district inquiry includes around 100 claims. A Tribunal panel has been appointed and in February held the first round of ngā kōrero tuku iho hui (hearings of oral and traditional evidence) at Kawiu Marae, Levin. The Tribunal has set a casebook research programme, which (after some delay during 2013) has recently started.
- ▶ The Taihape district inquiry (inland Pātea or Mōkai Pātea) includes around 30 claims. It has completed the first of two phases of casebook research. Following consultation with the parties, in May 2013 the Tribunal approved the second phase, which is made up of nine main projects. These are currently under way or are being commissioned.

Urgency applications

Applications for urgency have continued at a high level, with a small but growing number seeking an urgent remedies hearing. During 2013, the Tribunal received 10 applications for urgency and four for remedies hearings. Of these, two were adjourned, six were declined, and six were awaiting determination at year's end.

Most applicants seek urgency on one of two main grounds: issues arising from the Crown's process in conducting settlement negotiations, focusing on disputed mandates or the terms of settlement; and particular Crown policies and actions. Inquiries of both types featured in this period, during which the Tribunal released five reports on urgent claims. At the time of writing, three inquiries granted urgency were under way.

Completed reports

Since mid-2012, the Tribunal has released the following reports:

- ▶ *The Port Nicholson Block Urgency Report* (released in September 2012), which concerned a claim by the Port Nicholson Block Settlement Trust, representing Taranaki Whānui, that the Crown had violated the terms of its Treaty settlement by offering property redress to Ngāti Toa within the settlement area.
- ▶ *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (released as an interim report in August 2012 and as a final report in December 2012), which addressed the first part of a claim by the New Zealand Māori Council on behalf of all Māori concerning the impact on Māori water rights of the Government's proposed sale of power-generating State-owned enterprises.
- ▶ *The Ngāti Kahu Remedies Report* (released in pre-publication format in February 2013 and in final format in March 2013), which concerned an application by Te Runanga-a-Iwi o Ngāti Kahu for wide-ranging binding recommendations to redress the prejudice from Treaty breaches that had been proven in the Muriwhenua land inquiry.
- ▶ *Matua Rautia: The Report on the*

Kōhanga Reo Claim (released in pre-publication format in October 2012 and in final format in May 2013), which related to a claim by the Kōhanga Reo Trust that they had not been consulted over a 2011 report of the Early Childhood Education Taskforce, that the report had seriously damaged their reputation, and that, through policy development based on it, the report would cause irreparable harm to the kōhanga reo movement.

- ▶ *The Mangatū Remedies Report* (released in pre-publication format in December 2013), which concluded the Tribunal's inquiry, on referral back from the Supreme Court, into an application by Alan Haronga on behalf of the Mangatū Incorporation, together with three overlapping claims, for a binding recommendation for the return of the Mangatū Crown forest licensed land as a remedy for their historical claims.

For more detail on these reports, see issue 65 of *Te Manutukutuku*.

Urgencies under way

The Tribunal currently has three active and two deferred urgent inquiries before it:

- ▶ Stage 2 of the *National Fresh Water and Geothermal Resources Inquiry* has begun. The Tribunal has agreed to a joint proposal from the Crown and claimants that the inquiry should be narrowly focused on a single-issue question, namely: What further reforms need to be implemented by the Crown in order to ensure that Māori rights and interests in specific water resources as found by the Tribunal in stage 1 are not limited to a greater extent than can be justified in terms of the Treaty? The next step is for the Crown to provide detailed



The stern section of the mv Rena almost totally submerged on the Otaiti (Astrolabe) Reef

Maritime New Zealand

information on its proposed water management reforms.

- ▶ The Latimer and Piripi claim (Wai 2374) and the legal aid in civil proceedings claim (Wai 2386) were granted urgency in March and June 2013 respectively. The first claim concerns the administration of legal aid in the Tribunal's jurisdiction, the second the funding of legal aid for Māori groups to bring civil proceedings in the general courts about alleged Treaty breaches. Following further Crown action and clarification, the Tribunal concluded that the grounds for urgency had ceased, and it deferred both claims for later hearing.
- ▶ The mv *Rena* claim (Wai 2386) was granted urgency in January 2014. The claim, submitted by Elaine Butler on behalf of Ngāi te Hapū Incorporated Society of Motiti Island, concerns the Crown's position and actions affecting the removal of the remains of the wreck of the *Rena* from the Otaiti (Astrolabe) Reef off Tauranga.

- ▶ The Māori Community Development Act 1962 claim (Wai 2417) was also granted urgency in January 2014. The claim, lodged by the New Zealand Māori Council, concerns the process adopted by the Crown for the reform of the 1962 Act, in particular the consultation process and the effects of the reform on the council and Māori wardens. It is scheduled to be heard in March.

The future

The Tribunal is actively preparing for a future of growing diversity, and to this end it has been developing a long-term strategic plan to outline its priorities and direction for the coming years. The last district inquiries are currently in progress and will take some years to complete. Other historical claims will also require attention as the Crown and Māori move to complete historical Treaty settlements. The strategic plan will outline the future work programme when its main focus moves towards contemporary and kaupapa (non-land based) claims. □

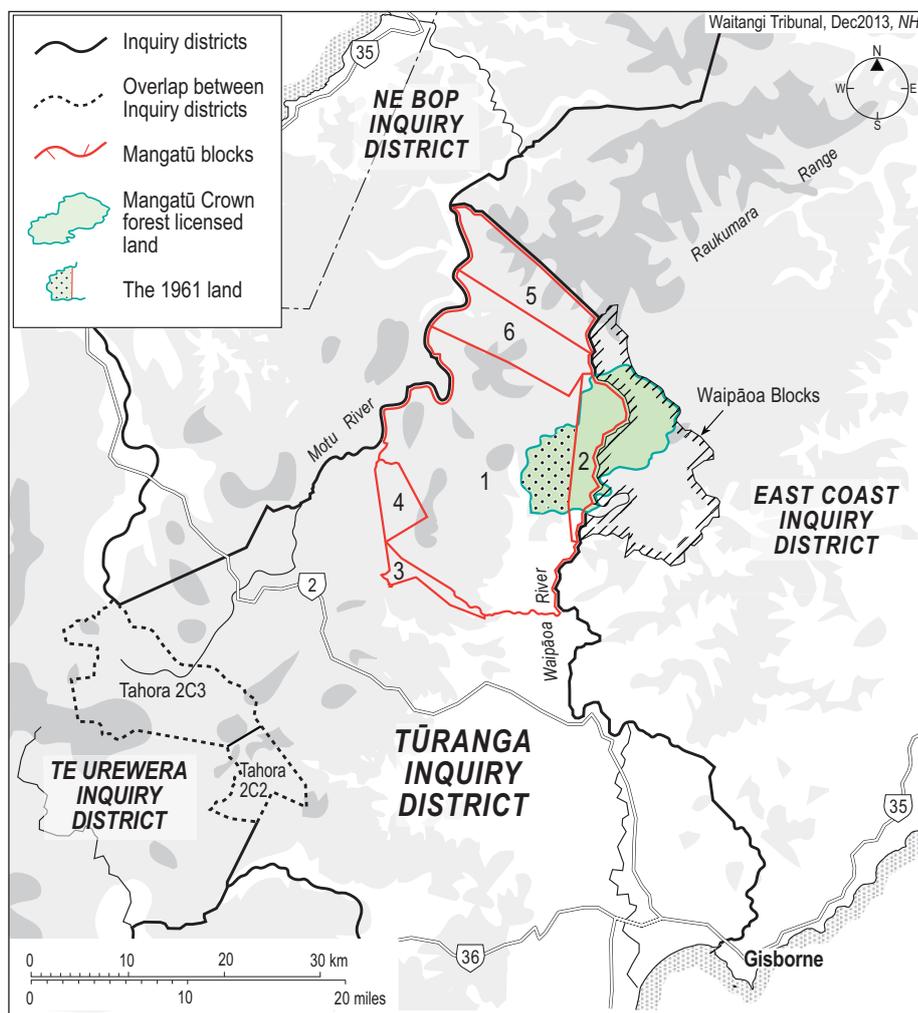
The Mangatū Remedies Report

THE Waitangi Tribunal released the *Mangatū Remedies Report* in pre-publication format on 23 December 2013. The report was the result of a remedies hearing initiated by the Supreme Court, which in May 2011 directed the Tribunal to hear the Mangatū Incorporation's application for binding recommendations returning part of the Mangatū Crown forest licensed land as a remedy for its claim. (Crown forest licensed land is former State forest land owned by the Crown where the rights to harvest and replant the forest have been licensed to private companies.)

The Mangatū Incorporation is a land-owning body with shareholders from Tūranga (Gisborne) iwi and hapū groups, including Te Aitanga a Māhaki and Affiliates and Ngā Ariki Kaipūtahi. Along with Te Whānau a Kai, these groups subsequently lodged their own remedies applications. The Tribunal panel comprised Judge Stephanie Milroy (presiding), Tim Castle, Wharehuia Milroy, and Dr Ann Parsonson, and hearings were held in Gisborne in June and October 2012, with closing submissions presented in Wellington in November 2012.

Remedies applications

The Tribunal had previously considered the historical claims of Tūranga Māori in its 2004 report *Turanga Tangata Turanga Whenua: The Report on the Turanganui-a-Kiwa Claims*. The Tribunal identified significant Treaty of Waitangi breaches by the Crown, especially the loss of life and land suffered by Māori in the Tūranga district. The claims considered by the Tribunal included one by the Mangatū Incorporation about the Crown's 1961 purchase of 8,522 acres of land ('the 1961 land'), land which is now part of



The Mangatū Forest and surrounding area

the Mangatū Crown forest licensed land. The Tribunal found the purchase to have been in breach of the Treaty because the Crown failed to act reasonably and with the utmost good faith during its negotiations with the owners.

All four applicants asked the Tribunal to make a binding recommendation that the Crown return the Mangatū Crown forest licensed land as redress for the prejudice they had suffered as a result of the Crown's Treaty breaches. Generally, Tribunal recommendations are non-binding on the Crown. However, as the result of an agreement reached between the Crown and Māori in 1989, if a

well-founded claim relates to Crown forest licensed lands, the Tribunal can recommend that the land be returned to Māori ownership. Such recommendations become binding on the Crown unless a negotiated settlement altering the terms of the recommendation is reached within 90 days.

Treaty breach

The report explains that, in deciding whether to make recommendations – including binding recommendations – the Tribunal is obliged to have regard to all the circumstances of a case. These include the extent and

seriousness of the Treaty breaches identified, the full scope of prejudice suffered by all the claimants, and the type of redress required to remove or compensate for that prejudice.

The Tribunal emphasised the serious nature of both the Crown's Treaty breaches in Tūranga and the prejudice that flowed from those breaches. For the Mangatū Incorporation, the prejudice suffered was primarily cultural and spiritual. An initiative of Tūranga leader Wi Pere, the incorporation was established to retain ancestral land in the hands of its owners. In that context, the loss of the 1961 land – the only land the incorporation has lost in its history – resulted in serious cultural and spiritual prejudice. However, the Tribunal determined that the price paid by the Crown for the 1961 land was fair and that the owners did not suffer economic or financial prejudice.

The Tribunal found that Te Aitanga a Māhaki, Ngā Ariki Kaipūtahi, and Te Whānau a Kai had all suffered serious and lasting prejudice as a result of the Crown's Treaty breaches. This prejudice included not only significant loss of land and life but also broader political, economic, social, and cultural impacts. With their autonomy crushed

by the Crown's military incursions into Tūranga and their opportunities for advancement in colonial society sharply curtailed by the loss of land and resources, these groups suffered a dramatic demographic decline.

Recommendations

The Tribunal concluded that all four applicants had claims deserving of significant redress, but it declined to make the binding recommendations sought. The Tribunal considered that it could not be certain that a binding recommendation for the return of Mangatū Crown forest licensed land would provide redress proportionate to the prejudice suffered or that the recommendations would be fair and equitable between the four groups.

The Tribunal was also influenced by the fact that accumulated forest rentals automatically accompany any return of forest land, which could have the effect of unfairly skewing the distribution of settlement assets. In the case of the Mangatū Incorporation, the Tribunal's view was that the combined value of the land and money went beyond what was needed to compensate for or to

remove the prejudice suffered by the incorporation's shareholders. It would also be disproportionate compared to the total Treaty settlement package on offer to settle all the historical claims of Te Aitanga a Māhaki, Ngā Ariki Kaipūtahi, and Te Whānau a Kai. The Tribunal considered various ways in which the redress that it was empowered to award to the incorporation might be reduced in order to provide a more equitable outcome for all the parties, but it determined that it would be unable to provide such an outcome with binding recommendations.

As a result, the Tribunal urged the applicants to return to settlement negotiations. This would allow them the flexibility to develop a comprehensive settlement of all their claims, something the Tribunal could not achieve through the use of its binding powers. The Tribunal emphasised that the Crown must take the necessary steps to ensure that the claimants' cultural, spiritual, political, and economic well-being is restored. In doing this, the Crown would restore its own honour and enhance its future Treaty relationship with Te Aitanga a Māhaki, Ngā Ariki Kaipūtahi, Te Whānau a Kai, and the Mangatū Incorporation. □

The Mangatū panel at Te Poho o Rāwiri Marae, Gisborne. From left: Tim Castle, Judge Stephanie Milroy (presiding), Professor Wharehuia Milroy, and Dr Ann Parsonson.



Unregistered Claims

IN 2006, an amendment was made to the Treaty of Waitangi Act 1975, setting a deadline of 1 September 2008 for the submission of historical Treaty claims. A historical Treaty claim was defined as any claim relating to a piece of law enacted before 21 September 1992 or a policy, practice, act, or omission of the Crown that occurred before 21 September 1992, this being the date that Cabinet had agreed to the general principles for settling Treaty claims.

In the years before 2006, there had been calls for the Government to provide some finality to the Treaty claims settlement process. The idea of establishing a closing date for the submission of historical Treaty claims was widely canvassed in the run-up to the 2005 general election. It was said that such a closing date would give greater certainty to Māori claimant groups, the Waitangi Tribunal, the Government, and all New Zealanders, by letting them know how many historical claims remained to be heard and when the historical inquiry process could reasonably be expected to end.

The Tribunal received an extraordinary number of new claims leading up to the 1 September 2008 deadline. Approximately 1,880 claims were submitted between 5 August 2008 and 1 September 2008 – more than the Tribunal had received in its entire history till then.

It was the job of the Tribunal's registry to initially assess whether each of these 1,880 claims met the criteria for registration, as set out in section 6 of the Treaty of Waitangi Act. By July 2009, roughly 530 claims had been registered. Those remaining claims that did not meet the registration criteria were examined to determine what specific further information was required. The registry was then tasked with contacting each of the claimants and

letting them know what they needed to provide in order for their claims to be registered. Members of the registry team also met with claimants at judicial conferences around the country to discuss the further information required.

Because there was a push to get claims in prior to the deadline, many claimants had provided only basic information. In general, claimants needed to provide some detail around what the Crown had done or had failed to do that had prejudicially affected them or their whānau, hapū, or iwi in breach of the principles of the Treaty. Other problems that prevented registration included claimants not signing their statement of claim; claims being filed by a group or organisation rather than by individuals, as required under the Act; and allegations being made against non-Crown entities, such as private organisations, local councils, or individuals.

Over the past five years, claimants with unregistered claims have received on average three pieces of correspondence requesting the missing information in order for their claims to be registered. However, it appears that some claimants no longer wish to pursue their claims or their contact details have changed, making it difficult for the Tribunal to collect that information.

A particular problem encountered with this round of correspondence was mail being returned as undeliverable owing to claimants having moved. In trying to track down contact details for these claimants, the Tribunal spent significant time scouring the internet and white pages, and it placed a notice in three major national newspapers, as well as on the Waitangi Tribunal and Māori Land Court websites. This notice included a list of claimants that the Tribunal was trying to contact,

along with a request for anyone with relevant information to contact the Tribunal. Another unique problem encountered, due to the lapse in time since the claims were first filed, was the fact that a number of the original named claimants had passed away.

The Tribunal has come a long way since the 2008 deadline in processing the great influx of claims. To date, 1,420 of these claims have been registered, declined, or withdrawn by the claimant. As at 1 November 2013, approximately 460 unregistered historical claims remained. The registry is currently contacting these remaining claimants, who are being given a final deadline to provide the information required in order to register their claim. If that information is not received, the claim will be referred to the chairperson or deputy chairperson to determine whether to decline to register the claim.

It is important that those with historical claims are given the opportunity to pursue them, and the Tribunal has worked extremely hard to ensure that claimants have been given the chance to have their claims registered. It has been some five years since the 2008 deadline and, in line with the purpose of the 2006 amendment, it is important that some finality is established in relation to historical Treaty claims. □

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