



TE MANUTUKUTUKU

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New claim raises big issues for urban Maori groups

AN AUCKLAND Maori Trust has told the Waitangi Tribunal that the way in which a Government funding agency allocates social service funding is in breach of the Treaty.

THE CLAIM BY Te Whanau O Waipareira trust which had its first hearing in Auckland at the beginning of this month, is unusual in challenging current Government policy.

Te Whanau O Waipareira, a large Maori trust providing business and social services in West Auckland, was set up in 1986. It has assets of nearly \$4 million, employs 260 and is the region's largest provider of vocational training. It also runs a flourishing rubbish collecting business and a range of health, welfare and legal services.

Some of the funding for these social services comes 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.

The claim to the Tribunal was triggered by a reduction in funding from CFA over the last three years. The issue at stake, though, is not money, but how the awarding of Government funding contracts reflects the status of the trust as a Treaty partner.

The claimants say Maori in West Auckland represent around 35 percent of those using the social and health services funded by CFA.

But the trust, the only Maori provider of services targeted specifically to Maori, received only 16.6 percent of total CFA allocation for West Auckland in 1992 and less still—13.8 percent—in 1993.

The claimants say that the trust was set up to address the social problems of West Auckland Maori which have resulted from rapid urbanisation linked with policies which themselves breached Treaty principles.



John Tamihere, chief executive of Te Whanau o Waipareira outside one of the Trust's training units.
Picture courtesy of the Dominion.

Like other pan-tribal organisations such as the Maori Womens Welfare League and Maori wardens, Waipareira was established in a way which reconstructs traditional Maori structures and patterns in an urban context.

As such, the claimants argue, the trust is a Treaty partner representing the West Auckland Maori community. And in re-

ducing funding to the trust, the Crown has failed to recognise the representative status of Waipareira and to recognise that it is a Treaty partner.

A further hearing to complete claimant submissions and possibly for the Crown response, is expected to be held 7 to 11 November. *(Hearing continuing.)*

Wellington Tenths hearing resumes

HEARINGS BY THE Waitangi Tribunal on part of the wide-ranging and complex Wellington Tenths claim have resumed after a three year gap.

Hearings on the claim were adjourned at the Crown's request in 1991 while the Government carried out a review of Maori Reserved Land.

The Wellington Tenths consists of just over 36 acres of urban land plus 181 acres

of rural land on the outskirts of Wellington near Kaitoke.

The history of the Tenths goes back to 1839 when the New Zealand Company, promoted by Edward Gibbon Wakefield, offered Wellington for sale to settlers. The terms of the sale provided for the reservation of a portion of land, equal to one-tenth for the benefit of the native inhabitants—Maori.

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Tena Koutou. Nga mihi nui ki a koutou, iwi Maori, iwi Pakeha

WELCOME TO THIS first issue of a revamped *Manutukutuku*. We intend to use this expanded format to provide more information on the activities of the Waitangi Tribunal and its servicing arm, the Waitangi Tribunal Division.

The new *Manutukutuku* will provide regular updates of basic information on new claims, the Tribunal's hearing and conference programme and progress with research projects, both in-house and commissioned. I hope this will go some way towards meeting the many requests we receive daily for more information on these subjects.

As a start, and particularly for our new readers, this issue looks at the background and workings of the Tribunal, introduces Tribunal members, and explains the role of inter-related bodies like the Treaty of Waitangi Policy Unit and the Maori Land Court.

Manutukutuku will also include a number of regular columns, one of which will examine legal points which crop up frequently. The first looks at the "memorials" on former Crown properties sold by state owned enterprises to private buyers and asks if and how the "memorials" can be removed.

The newsletter will also carry regular reports on historical and legal conferences, which I note with interest, are increasingly dominated by Treaty and Tribunal issues.

TE MANUTUKUTUKU

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DESIGNCOM—TAURANGA

Manutukutuku will continue to list new claims and claims in progress.

The new-look magazine is being co-ordinated by former *New Zealand Herald* press gallery journalist, Juliet Ashton. I hope it delivers what readers want and I'd welcome any comments.

I'd like to conclude with a brief statistical outline of the Tribunal's activities over the past financial year.

Both members and staff continue to cope with a heavy—and increasing—workload. Over the last year, there has been a 22 percent increase in the number of registered claims—from 352 to 431. Since its establishment in 1975, the Tribunal has dealt with a total of 96 claims or just over 22 percent).

The year has also been the heaviest to date in terms of hearings, judicial

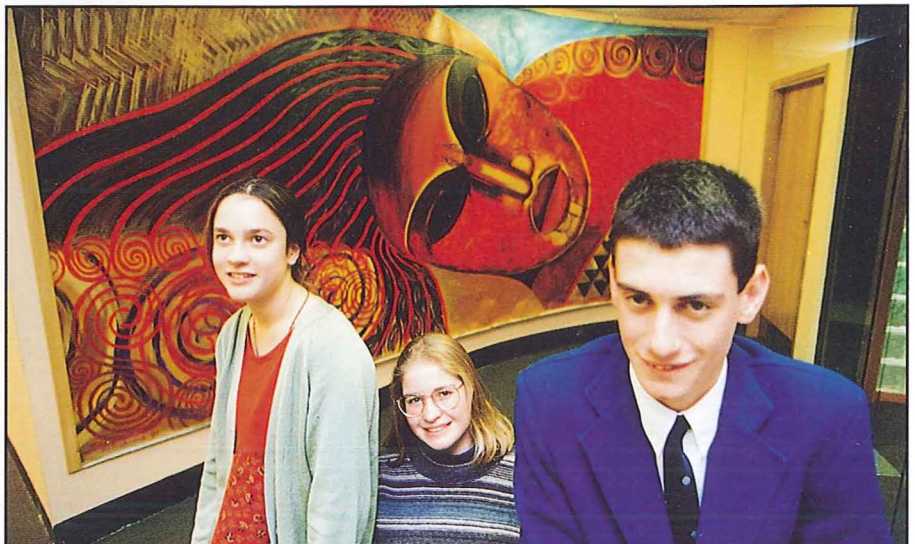
conferences and meetings. Submissions have been heard on a mix of 13 individual and grouped claims and major reports completed and published on the Maori Development Corporate Claim (Wai 350) and the Maori Electoral Option (Wai 413).

As always, the Tribunal received a large number of media inquiries, all of which were responded to. Members and staff also met all requests for speaking engagements during the year.

The high standard of our research and our research historians is increasingly being recognised. There is a growing demand for our reports—not just from New Zealand individuals and groups but also from overseas scholars.

This is very satisfying—even if it means our workload is likely to increase still further. ♦

Writing to remove prejudice



Winners of the Waitangi Tribunal essay competition for Women's Suffrage Year—Kiri Noronha, Vera Scurr and Jarrod Murphy.

TRIBUNAL CHAIRMAN Chief Judge Edward Durie was full of praise for the winners of an essay competition organised by the Waitangi Tribunal for Women's Suffrage Year.

He said the essays by Kiri Noronha of Queens High School in Dunedin, Vera Scurr of Columba College in Dunedin and Jarrod Murphy of St Kentigern College in Pakuranga were "beautifully written and well-crafted" and he couldn't get over the quality of writing evident in today's schools.

The students wrote about the relationship between women's and treaty issues—a topic selected because 1993 was the United Nations Year for Indigenous People. The winning essays all called for changes in community attitudes to women

and Maori who, the students said, suffered from lack of opportunity despite legal sanctions against discrimination.

Vera summed up the themes highlighted by all three when she wrote that: "Racism and sexism are so much part of our society that they have become unconscious in many cases.

"These attitudes and beliefs cannot simply be changed by making new laws. Change begins in the hearts and minds of ordinary people."

And Kiri wrote: "It may seem a naive ideal but this is not so. It is rather a hope for the future in order to mould New Zealand into a better, more equal, more broad-minded and broad-sighted country for all its people to live in."



Chief Judge Edward Taihakurei Durie

EDWARD (EDDIE) Durie is Chief Judge of the Maori Land Court and chairman of the Tribunal. Of Rangitane, Ngati Kauwhata and Ngati Raukawa descent, he says: "My grandparents and others of their age fought hard for the recognition of the Treaty and a forum for their claims".

His grandfather, Meihana Te Rama was a long-standing member of the Board of Maori Affairs while his grandmother, Kaharautete was the first patroness of the Maori Women's Welfare League.

He attended Te Aute College and graduated from Victoria University with a BA and LL.B. and worked as a solicitor in Wellington and Tauranga before being appointed as Judge to the Maori Land Court in 1974.

In 1981 he became Chief Judge of the Maori Land Court and chairman of the Waitangi Tribunal. He has brought about improvements to Tribunal procedures and has been closely involved in most of its hearings and the writing of its reports.

Rt Rev Manuhua Bennett, ONZ, CMG

MANU BENNETT, retired Bishop of Aotearoa, says his work for the Tribunal is "an extension of my previous Ministry; it is a vocation, a calling and a service." A member of Te Arawa, he went to school at Otaki and Te Aute College before attending theological college and serving in World War Two as a chaplain in the Middle East and Italy.

He has been active in the Anglican Church's bicultural programme, and in

The Waitangi Tribunal: Back row, from left—Keita Walker, Georgina Te Heuheu, Ashley McHugh, John Kneebone, John Ingram, Makarini Temara, Glendyn Carter, Hepora Young and Joanne Morris. Front row, from left—Emarina Manuel, Pamela Ringwood, Manu Bennett, Chief Judge Edward Durie, Gordon Orr, Evelyn Stokes and Mary Boyd. Ashley McHugh and Emarina Manuel are still doing work for the Tribunal though their terms as members have expired. Glendyn Carter is a Maori Land Court judge who is presiding over some claims.

Absent: Sir Hugh Kawharu, Keith Sorrenson, Brian Corban.

Tribunal members from diverse walks of life

recent times has served on the Telethon National Trust and chaired the Maori Tourism Taskforce. He has also been deeply involved in changes to the Waitangi Day celebrations. He holds the CMG and the special Order of New Zealand.

Sir Hugh Kawharu

PROFESSOR SIR Hugh Kawharu belongs to Ngati Whatua and is a former head of the anthropology department at Auckland University. He holds a BSc (New Zealand) MA (Cambridge) and D.Phil (Oxford) as well as being an authority on traditional and contemporary Maori land law.

From 1953 to 1965 he worked for Maori Affairs in housing, welfare and trust administration. He held a personal chair in social anthropology and Maori Studies at Massey from 1970 before taking up his Auckland appointment. He has been a member of the Royal Commission on the Courts, the Council of the Auckland Institute and Museum, and is a member of the

Board of Maori Affairs and chairperson of the Ngati Whatua of Orakei Maori Trust Board. He set up Te Runanga o Ngati Whatua, a unifying body for all his tribe. He has also served as a United Nations consultant.

Mrs Georgina Te Heuheu

GEORGINA TE Heuheu is Ngati Tuwharetoa with Te Arawa and Tuhoë affiliations. A lawyer and barrister, she was born and raised at Taurewa, beneath Mt Tongariro. She was educated at Turakina Maori Girls School, Marton, Auckland Girls Grammar and Victoria University where she was admitted to the bar in 1972.

She served on the Commission of Inquiry into Maori Reserved Lands and is a director of the Maori Development Corporation, which aims to accelerate Maori economic development, and a member of the Courts' Consultative Committee.

Continued over page

Professor Gordon Orr

Gordon Orr, former Secretary for Justice and expert on administrative law, regards his Tribunal work as "the culmination of my career and the most interesting and rewarding work I have done." He combined a deep interest in New Zealand law and history—principally of legislative social reforms—in a three-cornered career involving the practice, administration and teaching of law.

He practised as a barrister and solicitor in Christchurch and Wellington before becoming a crown counsel for 12 years, then moving to the State Services Commission. In 1974 he was appointed Secretary for Justice before becoming professor of constitutional law at Victoria University.

As a Pakeha, he was influential in making his faculty more responsive to Maori requirements. He is a full-time member of the Tribunal and has worked on a wide range of claims.

Professor Keith Sorrenson

KEITH SORRENSON'S first thesis as a graduate at Auckland University was a study of the purchase of Maori land from 1865-1892. When he began his research in the mid-1950s he found he was the first to explore this area since the Government Commissions of the nineteenth century.

Professor Sorrenson, from Auckland University's history department, is a former member of the New Zealand Historic Places Trust and a member of the New Zealand Geographic Board.

He was a foundation member and former president of CARE and has published numerous historical texts on Maori and race relations matters.

Mrs Mary Boyd

HISTORIAN MARY BOYD says she belongs to the generation of New Zealand historians "who really believed one had to know a lot about anthropology and race relations if one was to understand our own history."

This approach led Mary, a retired Reader in history at Victoria University, to Maori history and society and Pacific history, focusing particularly on aspects of decolonisation in Samoa.

A Pakeha, she also shares with fellow Tribunal member Keith Sorrenson an interest in African history and she has studied at the Institute of Commonwealth Studies. She has written a history of Hastings, where she was born, and convened the working party there for the New Zealand Dictionary of Biography.

Mr John Kneebone, CMG

JOHN KNEEBONE, a fourth-generation Pakeha and former national president of Federated Farmers, lives on a Waikato

farm and has worked as a consultant in farm finance restructuring.

He first dairy-farmed leased Maori land and has 30 years experience in district politics, including sitting on the Land Settlement Board.

He sees Maori and Pakeha settlers as being separated by entirely different perceptions of what land means to them and he believes that too often land conflicts are left to bureaucracies to deal with.

"Maori really have been the victims of procrastinating bureaucracy—we've got to take the heat out of the situation," he says.

Ms Joanne Morris

JOANNE MORRIS is a lecturer in law at Victoria University and chaired the three-person ministerial inquiry into pornography. She has an LL.B from Canterbury University and an LL.M from the University of Sydney where she lectured for six years. She is an executive member of the Wellington branch of the National Council of Women, the Association of Victoria University Women and a former national vice-president of the Association of University Teachers.

Associate Professor Evelyn Stokes

EVELYN STOKES, associate Professor of Geography at the University of Waikato, says she grew up with two versions of history. "I used to go down to the pa for dances as a teenager—the Maori obviously had a different version of the history of my district than what school taught us."

After completing an MA at Canterbury, she studied for a PhD, at Syracuse University in New York before becoming a foundation staff member at Waikato.

She researched and taught environmental impact and resource issues with a special emphasis on Maori land. She is a member of the Ngai Tahu Tribunal Trust and her special interest in 1860s history of Waikato-Bay of Plenty has involved her in earlier raupatu claims. Her publications include a report on the Urewera and A History of Tauranga Country.

Sir John Ingram

SIR JOHN INGRAM is an engineer, company director and consultant and member of the University of Auckland Council. He was chief executive of New Zealand Steel (now BHP NZ Steel) for 18 years, during which time he was involved in negotiations with Maori.

He is past president of the NZ Institution of Professional Engineers and the Manufacturers Association. He has wide experience and has written extensively on the industrial commercial and manufacturing areas. He is also active in voluntary work, particularly in the areas of conservation and youth skills training.

Keita Whakato Walker

KEITA WALKER of Ngati Porou, lives in Ruatoria on the East Coast where she is a farmer and community worker. She is also a member of Radio Ngati Porou Charitable Trust Board, the Ruatoria Charitable Trust Inc, and the Ngati Porou Social and Economic Development Task Force. She was an interim member of the National Te Kohanga Reo Task Force.

Makarini Temara

MAKARINI TEMARA, of Tuhoe, lives in Rotorua. He is chairman of the Tuhoe Trust Board, and a former president of the Ataarangi Language Society. He has also held senior positions in the Presbyterian Church.

Pamela Ringwood

PAMELA RINGWOOD is a senior law lecturer at the University of Auckland. She is a Family Court councillor and a member of the Ethics Committee of the New Zealand Institute of Mediators. She has sat on numerous committees, was a member of the Arahina branch of the Maori Womens' Welfare League and a founding member of the North Shore branch.

Brian Corban

BRIAN CORBAN lives in Auckland where he is a managing partner of Corban, Revell and Company solicitors. He is the chairman of Television New Zealand and the deputy chairman of the Broadcasting Corporation of New Zealand.

He is director of Ngatarawa Wines Ltd, Ports of Auckland Ltd, chairman of Waikato Energy Ltd and a trustee of numerous community bodies.

Hepora Young

HEPORA RAHURUHI Young of Ngati Tuara and Ngati Kearoa was born at Tarewa, Rotorua in 1925. She also has affiliations with Ngati Tuwharetoa, Ngati Awa and Ngati Raukawa.

Her father, Rahraruhi Pururu, was involved in beginning Sir Apirana Ngata's Land Development Scheme at Horohoro in 1930. Hepora and her husband are now overseeing the conversion of the family property, which she inherited from her father, from mixed farming to dairying.

Hepora trained as a primary school teacher, but after graduating from Massey University with a BA in history, taught mainly English at secondary level. Later she also taught Maori to senior classes.

In 1987 she moved to Wellington to help write the history of the Department of Maori Affairs, and, after its publication, was sponsored by the Department to edit and write the Te Matawai series of readers in Maori.

The Tribunal currently has one vacancy.

New staff bring skills to Tribunal

Profiling new staff who have recently started work at the Waitangi Tribunal:

NEW RESEARCH officer Aroha Waetford is of Ngati Haaua o Waikato, Te Atihau, Ngarauru, Ngati Tuwharetoa and Nga Puhi descent.

After competing a law degree at Auckland University, Aroha was admitted to the bar of the High Court and is now studying for a Masters degree.

Her thesis topic is Maori fisheries - the Sealord deal. Aroha has previously worked as joint Academic Support Co-ordinator for Maori law students at Auckland University and has also tutored students.

DEAN COWIE is also a research officer. He is of Scottish descent and grew up in a variety of places but says "Muriwhenua is my preferred home." He graduated from Auckland University with a Masters degree in history.

His thesis, on Governor Robert Fitzroy, was supervised by Tribunal member Keith Sorrenson.

Dean is working on the Chatham Islands claim (Wai 181), the te Whanganui-a-Orutu claim (Wai 55/201) and the Rangahaua Whanui project.

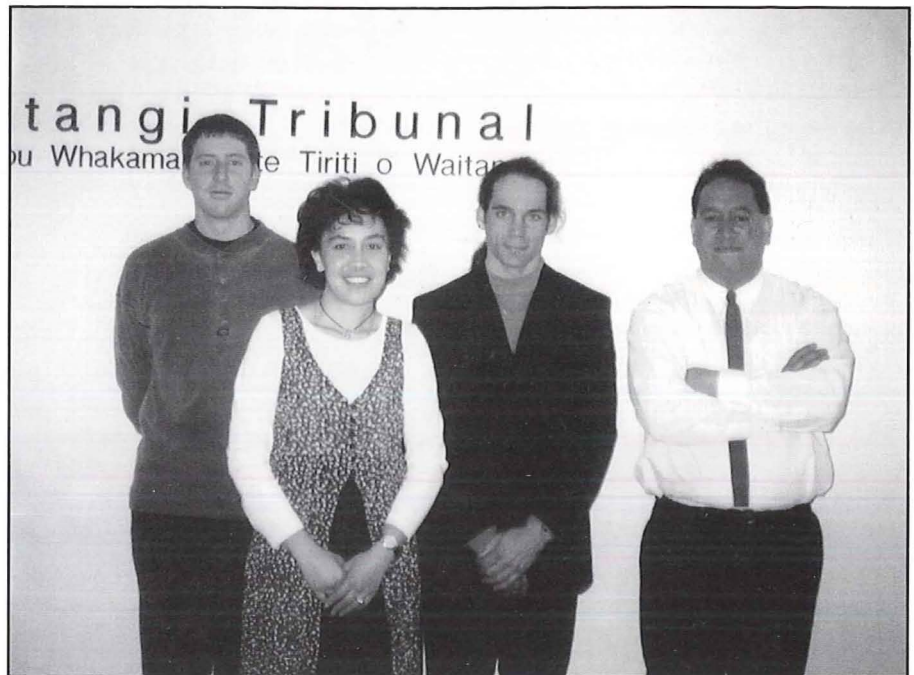
GEOFF MELVIN takes up the new position of legal research officer. Geoff grew up in Tauranga, then studied French at Auckland university before heading off overseas where he cycled round parts of Europe and travelled in Africa.

He returned to complete an Bachelor of Law degree at Victoria University, and has since worked in the Privacy Commissioner's Office and at the Treaty of Waitangi Policy Unit in the Department of Justice (TOWPU) as a policy analyst on a legal-historical project.

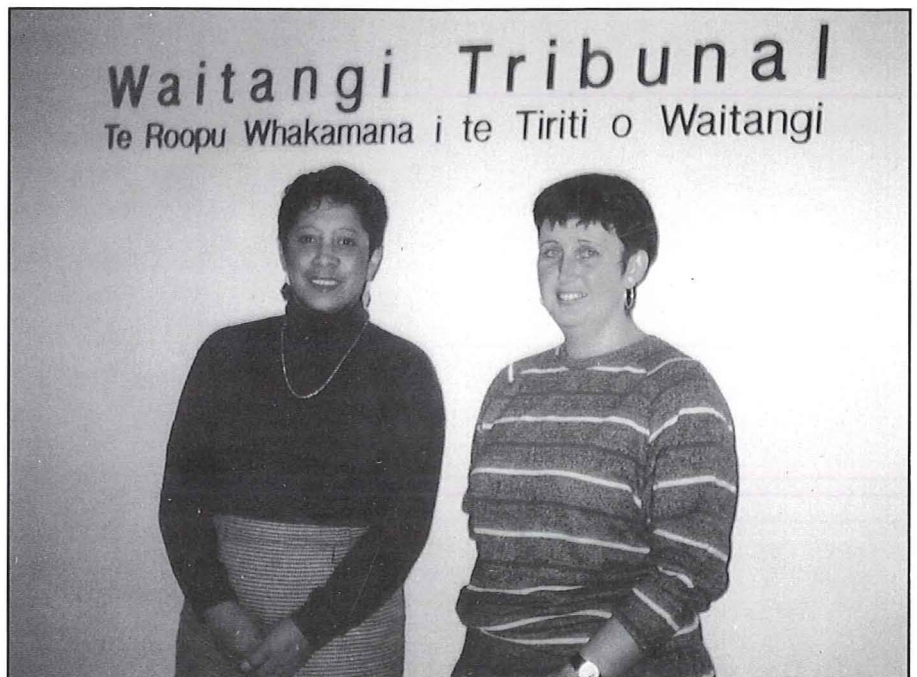
Geoff's work will include legal research, registration and claims administration work.

TUREI THOMPSON has started work as a claims administrator. Turei, whose tribal affiliations are Taranaki Whanui and Ngati Kahungunu ki Wairoa, began his career as a purchasing officer for the Ministry of Transport and later for the NZ Defence Force.

He has worked for the NZ Army on personnel and training issues, all of which gave him valuable experience in the co-ordination of activities, management of budgets, staffing and submissions, and the development, implementation and review of departmental policies.



New Waitangi Tribunal staff—from left, Dean Cowie, Aroha Waetford, Geoff Melvin and Turei Thompson.



Receptionist and director's personal assistant Phyllis Fergusson, and executive officer Sharon Dobson.

Turei is part way through a BA in Maori and hopes eventually to complete a double major in Maori and public policy.

He is also studying for a NZ Institute of Management Diploma in supervisory management. Turei and his "very supportive wife", Kirsty, have a baby son, Hori.

RECEPTIONIST AND Director's PA Phyllis Fergusson is a New Zealand-born Cook Islander, married with two sons.

She has previously worked as a recep-

tionist and reservations officer at a large Wellington hotel, and started work with the Tribunal in February.

EXECUTIVE OFFICER Sharon Dobson started work at the Tribunal in July, after transferring from the Commercial Affairs Division of the Justice Department, where she was Manager, Support Services. Before that Sharon spent 14 years working with law firms in Christchurch in finance and administration roles. ❖

A guide to the work of the Waitangi Tribunal

Why was the Waitangi Tribunal set up?

THE WAITANGI Tribunal was set up by the Government in 1975 to listen to Maori grievances—defined as actions which Government has allowed to happen which go against the promises in the Treaty of Waitangi. From 1975 to 1984 the Tribunal was allowed to listen only to grievances about matters that had happened since 1975. That restriction excluded many claimants who wanted to bring claims relating to issues like land confiscations last century. However, in 1985 the law was changed to allow the tribunal to hear claims dating back to 1840 when the Treaty was signed.

What is the Tribunal?

THE TRIBUNAL has 16 members plus a chairperson who is the Chief Judge of the Maori Land Court. Roughly half the members are Maori and half are Pakeha. They are appointed by the Governor-General on the advice of the Minister of Maori Affairs and Minister of Justice, for a three year term and can be re-appointed. Under the Treaty of Waitangi Act, members must be appointed for their personal attributes and their knowledge of, or experience in, the different aspects of matters likely to come before the Tribunal. Any two members, together with a chairperson, can hear a claim. This means that more than one claim can be heard at the same time by the Tribunal sitting in divisions. Generally, several claims are in hearing at the same time. In some cases, members can have a deputy to take his or her place. The Tribunal can be augmented by Maori Land Court judges who can act as presiding officers.

Is the Tribunal a court of law?

THE TRIBUNAL is not a court of law in the ordinary sense. Courts of law make decisions about what is law in New Zealand. The Tribunal's role is to act as the "voice" of the Treaty of Waitangi, interpreting what the Treaty "said" about particular events. The Tribunal makes a "finding" on whether and how the Treaty has been breached. It then makes recommendations on what could be done to put things right.

Its recommendations must be realistic—it must suggest modern day solutions. For instance, in the Motunui-Waitara claim, Te Ati Awa said their shellfish-gathering



Tribunal members collectively prepare a report.

beds were being destroyed by pollution. The Tribunal found that this was a breach of the Treaty which provided for protection from pollution. But it said that it was unrealistic to order a shift from sea-disposal of effluent to the land disposal methods favoured by Maori. Rather, it said, Te Ati Awa should accept the pollution already damaging some of their fishing grounds in return for an assurance that other grounds should not be spoilt.

The Act which set up the Tribunal says it is a commission of inquiry. This means it can order witnesses to come before it, order material or documents to be produced before it, and actively search out material and facts to help it decide on a claim. (Courts are much more limited in doing this.) It can also do things courts can't do like hearing unsworn testimony and accepting evidence that would not be legally admissible elsewhere.

What matters can the Tribunal cover?

THE TRIBUNAL can examine any claim in which Maori people say their interests have been prejudiced by laws, regulations, policies or practices of the Government since 1840 which are inconsistent with the principles of the Treaty.

Claims must be against the Crown—not against private individuals. Claims can be historical—for instance, where people are claiming compensation for confiscated land, or contemporary—for instance, where claimants say current Government policy is in breach of the Treaty.

Who can make claims to the Tribunal?

CLAIMANTS MUST be Maori or of Maori descent. claims must be brought by an individual or individuals who may in turn claim on behalf of a group.

Does it cost anything to make a claim?

MOST CLAIMS start by the submission of a written statement about the grievance. There is no Tribunal charge associated with the lodging of a claim.

What power does the Tribunal have to settle claims?

WHEN THE Tribunal has heard all the facts about a claim from all parties involved, it discusses the information and writes a report giving its findings to the Government. Sometimes it tells the Government what it thinks should be done to settle the grievance. It may recommend that the claimants settle the problem directly with the Government.

Does the Government have to do what the Tribunal recommends?

IN MOST CASES, no, because Tribunal recommendations are not binding. In many cases, however, the Government has acted on some or all of the recommendations of a Tribunal report.

The Tribunal can make binding decisions in cases where former Crown land has been passed to a state-owned-enterprise which may then have sold the land on again into private ownership.

This land is subject to claims before the Tribunal, and where it believes the claims are justified, the Tribunal can make a binding recommendation that it is returned. So far, it has not made such a recommendation.

Can the Tribunal hear claims about private land?

YES, BUT it cannot make a recommendation that the land be taken away from the current owners, nor, in the case of leasehold private land, can it make a recommendation that would result in the lessees being thrown off the land.

The only exception is cases involving former Crown land, passed to state-owned enterprises and then sold on to private

owners. In these cases, the land is sold with a "memorial" on its title, so buyers understand that it is subject to Maori claims.

Where are Tribunal hearings held?

THE TRIBUNAL can hold sittings anywhere. Often they are on marae, but they may also be in public halls, school rooms, courtrooms, conference rooms.

The venues and the way of proceeding are adjusted to the particular hearing. Because it is a commission of inquiry rather than a court, the Tribunal can decide how it will run proceedings.

Who can go to hearings?

TRIBUNAL HEARINGS are open to the public so anyone can go along. On rare occasions the Tribunal will hear submissions "in camera" or privately.

Such an occasion might be where evidence was being given concerning the location of a wahi tapu.

What happens when you make a claim?

WHEN A claim is received the Tribunal must make sure that it really is a grievance which goes against Treaty principles.

It tells the Crown Law Office (the Crown's lawyer) that a claim has been received, and sends a copy of the claim to

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PAPER REVEALS NATIVE LAND COURT INCONSISTENCIES

A RESEARCH paper written by a Waitangi Tribunal researcher has shown up major inconsistencies in decisions by the old Native Land Court on crucial issues relating to "customary" ownership of Maori land.

THE PAPER, by Waitangi Tribunal researcher, Dr Grant Phillipson, was presented at the annual conference of the New Zealand Historical Association in Auckland last month.

Dr Phillipson's paper looks at the actions of the Native Land Court, set up in the 1860s to "Europeanise" land titles, so decisions could be made on who had the right to sell Maori land.

It cites numerous examples which show that court decisions were neither uniform nor consistent, and says that "judgements only days apart could be radically different in both principle and outcome."

Native Land Court judges decided who owned various tracts of land. Once they had made a decision on ownership, certain named individuals were issued with Crown Grants (native title ceased to exist when a Crown Grant was issued) - which basically meant the Crown granted them the right to sell the land.

According to the Native Land Acts which controlled the court, decisions were supposed to be based on who, in Maori custom, was "in possession" of the land in question.

But the Native Land Acts did not set down any particular view as to what constituted Maori custom so the court's judges were left to make up their own minds.



Researcher Grant Phillipson

The result, say the researchers, gave "a very small group of Pakeha judges a free hand in deciding what was (and was not) Maori custom. Maori input into the process was provided for by the hearing of evidence from Maori witnesses, the advice of an Assessor, and the empanelment of Maori juries where necessary to clarify points of custom. In practice, however, the judges did not choose to consult Maori juries and often ignored the advice or opinions of Assessors."

It was the judges who decided to base decisions on who was in possession in 1840 when the Treaty was signed; the so-called 1840 rule.

As an example of the inconsistencies which occurred, the paper cites the Crown's handling of customary tenure in the provinces of Nelson and Marlborough in the northern South Island.

The New Zealand company had bought a large part of Nelson Province in 1839-43 and, by 1860, the Crown had bought the entire land area of the South Island. As part of these land deals, a series of re-

serves were created which were supposed to be held in trust for the benefit of the previous Maori owners (the Nelson Tenth's form part of these reserves).

Despite this, the Native Land Court stepped in and investigated the ownership of the reserves.

And the types of right-holders the court recognised were not usually the same as those recognised 30 years earlier by the Crown.

Dr Phillipson said the court examined the reserves' ownership "in the context of 40 years of Crown involvement in the ascertaining and extinguishment of Maori customary title, a process which in theory should have precluded the court from sitting in that district at all."

In some decisions, the court ignored the claims of the three iwi of Kurahaupo origin who had dominated the area till the late 1820s when a loose alliance of Taranaki and Kawhia Maori moved in and conquered them.

Judges adopted the position that conquest followed by occupation extinguished the rights of the conquered people, even though some of the conquered continued to live in their old communities.

In other decisions, however, the court recognised conquered people because they had received earlier recognition from the Crown. Neither of these scenarios was properly based on "Maori custom". In fact, the customary implications of that conquest are still before the Waitangi Tribunal today.

Copies of the paper are available from Dr Grant Phillipson at the Tribunal. A paper by Dr Robyn Anderson looked at similar issues in the Rangitikei-Manawatu district, and copies of that paper are also available. ♦

any one else who may be affected by it.

The claim is then given a WAI number and entered on the register of new claims. The next step is the research process. Claimants gather all the facts they can about the grievance.

If necessary, they can ask the Tribunal to commission a researcher to help them. If they need help from a lawyer, they can ask to have the lawyer's costs paid by the Government through legal aid.

The Tribunal, the Crown Law Office and other people affected will also research the issues. Once this stage is completed, hearings begin. The claimants speak first, followed by their (or the Tribunal's) researchers. The Crown responds and the claimants reply. Where necessary, the Tribunal can commission further research and make further inquiries.

The aim is produce findings and reports which are so thorough that all parties are satisfied (at the time and in future) that the recommendations are the basis for a lasting settlement.

In complex cases, a succession of hearings will be held over months or years. For instance, in the case of the Muriwhenua claim there were seven hearings over three years. Finally, closing arguments are presented by the Crown and the claimants.

Tribunal members then discuss the information and write their report which, again, may take months or years.

The Tribunal has published a booklet, *Maori Claims: How to research and write a report*, which sets out the claim process in detail. Copies are available from the Tribunal.

Who does what?

THE WAITANGI Tribunal hears claims relating to actions which Government has allowed to happen which go against the promises in the Treaty of Waitangi. It conducts thorough hearings and enables the history of claims to be aired and examined. The Tribunal then makes findings and recommendations to Government.

The **Treaty of Waitangi Policy Unit** is part of the Department of Justice and provides advice to the Government on Treaty issues. Where the Tribunal recommends that claimants negotiate directly with the Crown, TOWPU is responsible for handling the negotiation process.

It is also responsible for making sure Tribunal recommendations which are accepted by Government are acted on properly and promptly.

The **Maori Land Court** is a repository for information on court activity, past and present. Maori Land Court judges can also fill the role of presiding officers for Tribunal hearings. The **Maori Land Information Office**, which is attached to the court, can sometimes carry out research on behalf of claimants. ♦

A CASE IN QUESTION

You want to buy an old Post Office from Telecom but, as former Crown land transferred to a state-owned-enterprise, it's subject to Maori claims. As a private buyer, where does that leave you?

CROWN LAND transferred to a state owned enterprise and then sold on to private owners has a "memorial" on the title. This "memorial" tells prospective buyers that the land may be returned to Maori owners if the Tribunal considers that necessary.

This is called the claw-back or re-emption scheme and was set up under the Treaty of Waitangi (State Enterprises) Act 1988 to protect Maori claims to lands transferred from the Crown to state owned enterprises. You can apply to have a "memorial" removed. Since 1988, the Tribunal has received about 25 such applications, many relating to old Post Office housing. In several cases, it has recommended removal.

If you want to apply for removal of a "memorial" you must provide information to the Tribunal on how the Crown acquired the land so that po-

tential claimants can be notified. The application for removal is then publicly notified for 90 days.

If any claims are made to the property within that time, the Tribunal cannot recommend that memorials be lifted unless the written consent of the claimants is obtained. The Tribunal will then hold an inquiry into the claims.

As a prospective buyer, you're probably most worried about how a "memorial" will affect property values, and whether—in the case of a claim being brought and you losing the property—you will be compensated for improvements you've made.

At this stage, it's not possible to give a definitive answer because, to date, the Tribunal has not made a binding recommendation that any land be returned to Maori.

Waitangi Tribunal Current Programme

These dates are subject to change

12-16 SEPTEMBER

Wai 46
Ngati Awa
Whakatane

12-22 SEPTEMBER

Wai 414
Te Whanau o Waipareira
Auckland

3-4 OCTOBER

Wai 96/406
Zister Ngatai
Auckland

10-14 OCTOBER

Wai 64
Chatham Islands
Wellington

11-14 OCTOBER

Wai 212
Ikawhenua
Rotorua

26-28 OCTOBER

Wai 84
Turangi Lands
Turangi

31 OCTOBER-4 NOVEMBER

Wai 145
Wellington Tenth
Wellington

7-11 NOVEMBER

Wai 414
Te Whanau o Waipareira
Auckland

14-16 NOVEMBER

Wai 145
Wellington Tenth
Wellington

21-25 NOVEMBER

Wai 46
Ngati Awa
Whakatane

5-9 DECEMBER

Wai 143
Taranaki
To be advised

Hearing resumes after three years

From front page

The idea was that the "Tenths" would improve in value and provide "sustenance and well-being" for the descendants of the original owners.

That didn't happen in part because, like other Maori Reserved Land, the Tenths were leased in perpetuity for low rentals—against the wishes of the Maori owners.

A series of commissions of inquiry since the turn of the century have condemned the provisions of the Reserved Land Act as inequitable and detrimental to beneficiaries who have never been able to get market rentals for their properties or regain control of them.

The most recent review, carried out by a team headed by Judge Peter Trapski, has reported its findings to Maori Affairs Minister, John Luxton.

The report is yet to be made public but is expected to deal with questions of lease termination and compensation for losses.

A claim covering the entire Wellington Tenths land was lodged with the Tribunal in 1987, but was delayed by the adjournment and has not yet been heard by the Tribunal.

The hearings which resumed last month

related to just four properties—three in Pipitea St, near Wellington's central business district, and one other which is now occupied by Wellington South Intermediate School.

The claimants group, chaired by Dr Ngatata Love, asked for an urgent hearing on these properties following plans by Government Property Services to sell the Pipitea St properties.

At the latest hearing, the claimants presented submissions on 17 and 18 August. The Crown will give its submissions at a further hearing from 31 October to 4 November, with closing submissions from both parties heard 14 to 16 November.

Meanwhile, the claimants have asked that the urgent hearing be extended to deal with part of the wider claim which relates to reclaimed land—in particular, the land earmarked for a high profile proposal by Wellington City Council to build a stadium behind the Wellington Railway Station. The stadium proposal has attracted a lot of publicity and the claimants are now concerned that plans for the stadium will go ahead before the Tribunal is able to hear the wider claim.

(Hearing continuing.)

Important principles raised in small claim

THE WAITANGI Tribunal says the Maori owners of a block of land taken under the Public Works Act in 1955 should not have to pay \$70,000 to get the land back.

That's the sum asked by the Minister of Railways in return for "revestment" of a small land block at Te Maunga near Tauranga to its former Maori owners. In its just issued report on the Te Maunga claim, the Tribunal says that when land taken by the Crown is no longer required, it 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."

The report says the Te Maunga block was taken in 1955 to house Railways employees. In 1985, it was declared surplus to Railways Corporation requirements and the owners began their efforts to get the land back. In 1993 the

Maori Land Court made an order "revesting" the land in the former 22 owners or their descendants but the Minister of Railways set a \$70,000 plus GST condition on the revesting order which the claimants said they could not afford to pay.

The Tribunal report says, while the Te Maunga block is small, the issues raised in the claim involve important principles of the Treaty: the Crown right to make laws and take land in the public interest (*kawanatanga*), against the guarantees of protection of Maori ownership of lands (*rangatiratanga*).

As well as making specific recommendations relating to the Te Maunga claimants, the report recommends changes in public works legislation and offer-back procedures that would "reflect more positively the principle of a fiduciary obligation of the Crown toward Maori in the Treaty of Waitangi."

OBITUARY

Sir Makere Rangiatea Ralph Love, KB, QSO.

Knowledge a rare resource

Na, he mihi ki te rangatira kua ngaro ki te po. Haere ra e koro, haere, haere

SIR MAKERE Rangiatea Ralph Love died on 30 July this year, before the Wellington Tenths claim which was so close to his heart could be heard by the Waitangi Tribunal.

"His passing has meant we have lost the rarest of resources in presenting this case," his son, Ngatata Love, said in a submission to the latest Tribunal hearing.

"A person who has lived the history, knew all of the historical land uses on the ground and at first hand. He could show where the streams used to run, where kaimoana sources were, where the land of the marae—the urupa—began and ended and what happened and who had taken this over during the years.

"This knowledge is irreplaceable. The maps, the historical records, the Land Transfer Deed and other documents, do not convey this historical information. We are fortunate that he did pass on many of these personal areas of knowledge to the family."

Ngatata Love says the claim was at the forefront of his father's thoughts to the end and in the hours before his death he asked for his satchel which contained papers for the hearing. "He had been waiting three years for the Crown to agree to resume this urgent hearing. He wanted to know what was happening on this claim."

Sir Makere Rangiatea Ralph Love, was born in Homewood, Marlborough Sounds in 1907, and brought up in Wellington where he became well-known to both Maori and Pakeha. He worked as a Wellington Maori Land Court district office deputy registrar, a ministerial secretary to Labour Government Maori Affairs Minister Eruera Tirikatene, as Acting Controller of Maori Affairs, and as a Wellington City councillor and Petone mayor.

He was also a great sportsman, first playing the game then moving to rugby administration.

Project to establish databank

A MASSIVE, nationwide research project by the Waitangi Tribunal will, for the first time, establish a "bank" of information about Maori land claims throughout New Zealand.

PROJECT MANAGER Ian Shearer says that while much of the information has always been in existence, it hasn't previously been assembled in one place in easily accessible form.

The project, Rangahaua Whanui, is in two parts. The first part divides New

Zealand into 15 districts and examines land issues in most of them.

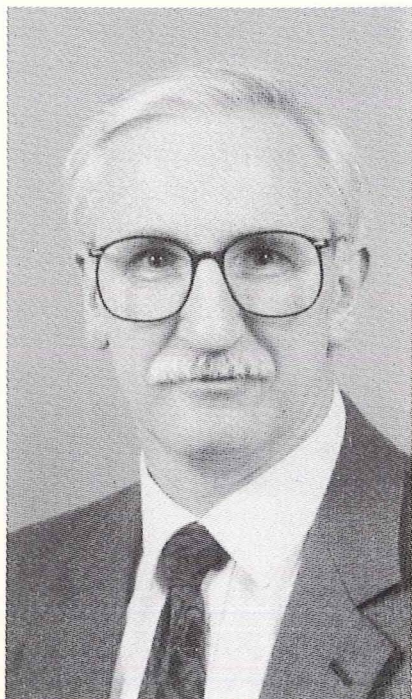
claim comes before the Tribunal which relates to that district. It will also allow the compilation of a national overview report. The second part of the project looks at land "themes"—like confiscations or land taken under the Public Works Act—on a national basis. So the confiscations researcher, for instance, will draw together information on all confiscations which took place throughout New Zealand.

As with the regional research, the result should be a vast and valuable pool of information. Dr Shearer says, while the project should enable research on claims to be done more rapidly and effectively, he is

sure that the information produced will also be in demand by other historians and iwi researchers.

Deadlines for completion of the project are tight—most of the district sections are scheduled to be completed by the end of the year, with the national themes due to be completed by mid-next-year.

The bulk of the work is being done "in-house" by the Tribunal's own researchers which does present some problems as many staff already have formidable workloads relating to claims currently before the Tribunal. ❖



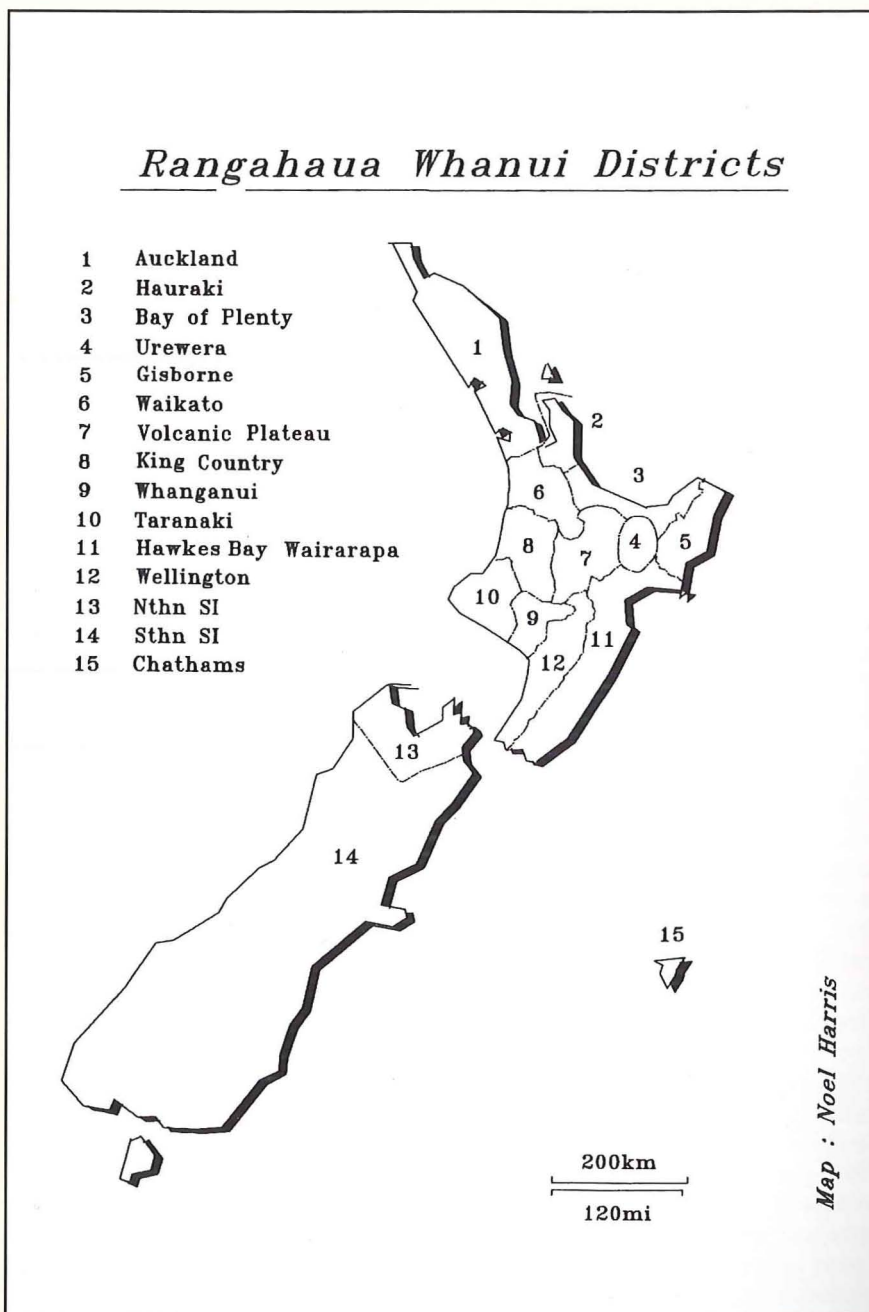
Project manager Ian Shearer.

Zealand into 15 districts and examines land issues in most of them.

Most districts have had a researcher assigned to research and write up, in overview, form information about land purchases and land alienation in that area.

Regional information is vital to the Tribunal's work because of the variations in the way in which different districts were governed in colonial times. Collecting the information on a district basis will assist in the identification of common themes and grievances as well as allowing some comparative studies.

Once the regional data is collected, it will be readily available for use when a



NEW CLAIMS REGISTERED

Wai 421

Claimant: JG Alexander
Concerning: Puketotara Block Claim
Region: Kerikeri/Northland
Received: 26 January 1994

Wai 422

Claimant: Arthur Waititi
Concerning: Waikura Block
Region: Cape Runaway
Received: 24 February 1994

Wai 423

Claimant: Te Warena Taua and another on behalf of Ngai Tai Ki Tamaki Trust
Concerning: Ngai Tai Ki Tamaki Rohe claim
Region: Auckland
Received: 21 December 1993

Wai 424

Claimant: Titoko Hohepa & Dean Houpa on behalf of Tarata Trust and others
Concerning: Kokomiko & Tarata claim
Region: Taumarunui
Received: 25 January 1994

Wai 425

Claimant: Wi Te Tau Huata
Concerning: Patunamu forest
Region: Northern Hawkes Bay
Received: March 1994

Wai 426

Claimant: Rangiwahia Osborne
Concerning: Te Uku Landing Reserve Claim
Region: Whaingaroa
Received: 10 December 1993

Wai 427

Claimant: Horopapera Tamaku Whaanga
Concerning: Waikokopu Land Claim
Region: Mahia
Received: 9 February 1994

Wai 428

Claimant: P.R. Lendrum
Concerning: Pipiriki Township claim
Region: Wanganui
Received: 26 January 1994

Wai 431

Claimant: W.M. Kaa and P Adds
Concerning: The Todd report on tertiary education funding
Region: Aotearoa
Received: 6 May 1994

Wai 433

Claimant: Tarati Hohepa-Birks
Concerning: He Putea Atawhai trust
Region: Auckland
Received: 4 May 1994

Wai 434

Claimant: Tiopira Phares
Concerning: Te Kaha B3 Block
Region: Te Kaha
Received: 31 March 1994

Wai 436

Claimant: Wi Te Tau Huata
Concerning: Mohaka forest
Region: Northern Hawkes Bay

Aboriginal rights advocate visits Tribunal

FATHERFRANK Brennan—Jesuit priest, lawyer and fighter for Aboriginal rights—visited the Tribunal recently and talked with Director Buddy Mikaere.

Father Brennan, who is advisor to the Catholic Bishops of Australia on Aboriginal issues and the author of four books of legal and constitutional issues, is researching a new book on indigenous land rights.

Like others involved in Aboriginal rights, he is interested in the work of Tribunal because there is nothing like it in Australia. What's more, Father Brennan believes that Australian Prime Minister Paul Keating's surprise backing for the Mabo judgement (which gave Aboriginals stronger but still limited land rights) was influenced by a recent trip to New Zealand where Keating was feted with Maori welcomes and ceremonies.

Father Brennan believes Keating saw New Zealand as a country with a national identity tied to its indigenous people, and

decided he wanted the same sort of thing for Australia.

Australia has lagged far behind New Zealand in terms of tackling indigenous issues and has only just passed legislation which gives Aborigines some of the rights Maori have had for years. The Native Title Act which enshrined the Mabo judgement in law only just squeaked past the Senate late last year.

It sets up a mechanism for Aborigines to seek native title to land that is traditionally theirs, but will benefit only around five percent of Aboriginal people who can claim land that hasn't been taken over by whites. For the rest, who can never claim native title, a land acquisition fund is to be set up to buy properties.

The next big battle in Australia is the call by Aborigines and Torres Strait Islanders to be written into the constitution with something like tangata whenua status.

To speak at seminars

TWO TRIBUNAL members are speaking at two seminars this month which look at ways Maori and Pakeha can work together.

Sir John Ingram and John Kneebone join an impressive line-up of speakers at the seminars to be held in Christchurch on 15 September and in Gisborne on 20 September.

Sir John's talk is titled "Mining - Side by Side" while John Kneebone is speaking on Recognising and Accepting Diversity.

The seminars, sponsored by the Race Relations Office are called Kokiri Nga Tahi Hui or "side by side" seminars.

The Waitangi Tribunal Claims

Orakei

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This superbly presented, colour, poster sized resource has been planned for use with the fourth form social studies syllabus, in particular modules 4.1 (The Treaty of Waitangi) and 4.2 (The search for security, justice and human rights). It can also be used for use in senior school history, geography, legal and cultural studies.

The resource was produced with the help of a group of teachers and was trialed in the classroom with great success.

Each kit contains 30 copies of the resource, plus teacher's notes and student's exercises.

OTHER RESOURCE KITS AVAILABLE

Set one: **Kaituna** environmental pollution claim, Rotorua

Set two: **Motunui-Waitara** environmental pollution claim, Taranaki

Set three: **Te Roroa** historical land loss claim, Northland

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Maori Claims

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By Jane Tucker

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THE WAITANGI Tribunal produces a wide range of reports, resource kits and research information.

Tribunal publications can be broadly divided into three categories—reports on specific claims, occasional publications on particular issues, and research reports.

Some research reports are written by Tribunal researchers, others by claimant or commissioned researchers.

Publications are available either from the Tribunal or from Brooker and Friend Ltd.

A full list of publications, with price list, is available from the Tribunal.

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