

TE MANUTUKUTUKU

*Te Roopu Whakamana i te
Tiriti o Waitangi*



*Waitangi Tribunal Division
Department of Justice
Newsletter*

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CHATHAM ISLANDS CLAIMS

The Tribunal has received four claims concerning the Chatham Islands. They are:

WAI 54 Te Ati Awa Claim

The claim, dated 23 December 1987, was filed by Makere Rangiatea Ralph Love for the Taranaki Maori Trust Board.

While principally concerned with Taranaki confiscated lands, this claim specifies a concern with fishing rights, stating in its claim that the claimants have been prejudicially affected by 'denial of fishing rights in and around the Chatham Islands'.

WAI 64 The Moriori Claim

Received from Maui Solomon on 15 March 1988 the claim states:

'I, . . . , and all the members of my family, whanau, hapu and Moriori Iwi, claim that we have been prejudicially affected by the actions of the Crown which have alienated us from our fisheries in Rekohu (Chatham Islands). We have been denied the rights and protection of our fisheries, lands and other valued things which were guaranteed to us in the Treaty of Waitangi'

WAI 65 The Runanga Claim

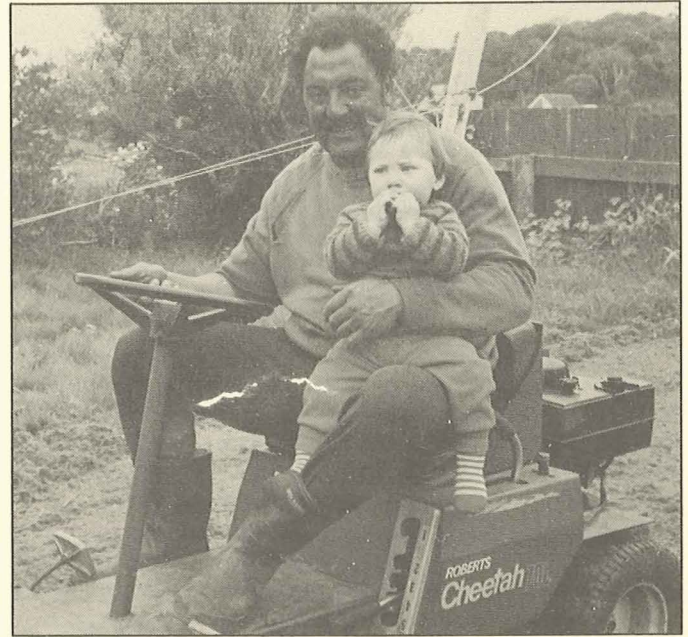
The claim, dated 6 April 1988, was filed by Mr R R Preece, Chairman of Te Runanga o Wharekauri Rekohu on behalf of:

' . . . the descendants of the tangata whenua, iwi, hapu of the rohe described as Te Runanga o Wharekauri Rekohu, otherwise known as Nga Iwi o Wharekauri Rekohu or Nga Iwi o Chatham Islands.'

The descendants claim to be prejudicially affected by alienation of lands and denial of mineral and water rights under various Acts of Parliament. They also claim prejudice in terms of their fishing interests as guaranteed by the Treaty in that the modern fisheries regime allows them limited access to the fisheries. A denial of birding rights and sealing rights occur through other statutes. This Runanga represents descendants of the Taranaki tribes: Ngati Tama, Ngati Mutunga, and also some Moriori/Taranaki descendants.

WAI 181 Kekerione no.1

This claim, filed by Mrs Ngawata Page of Ngati Mutunga, Ngati Tama and Te Ati Awa for the whanau of George Tokomaru Tuuta, was registered on 13 March 1991. The claim questions the Crown's use of a block of land on the Chathams known as Kekerione no.1, alleging that the land was donated by the claimants' tipuna for a hospital but only a portion was used for that purpose. The possibility of the Crown selling this land to outside interests gave rise to the claim.



Keith Kamo, Manager of Wharekauri since 1986 with son Rohan

A judicial conference was held on 21 May 1991 to hear an application from WAI 64 claimant Mr Maui Solomon who sought 'an urgent recommendation to the Crown to stop (or at least delay) the advertised sale of the farm in Rekohu known as Wharekauri'.

A submission was presented which gave historical background and discussed the proposed sale in light of the State-Owned Enterprise Act 1986 which places a memorial on the certificate of title. This memorial binds the Crown to return the land should the Tribunal make such a recommendation. The focus of Mr Solomon's submission was that the protection afforded by this caveat was not enough.

Peter Trapski, the Tribunal member chairing this conference, declined to recommend to the Crown to stop the sale, ruling that the Tribunal lacks the jurisdiction to make such a recommendation prior to investigating a claim and finding it to be well-founded. The reputation for thoroughness that the Tribunal has acquired with the courts, Crown and claimants would be undermined if it made recommendations to the Crown before making a full inquiry.

In any case, the State-Owned Enterprises Act 1986 places the claimants in a privileged position with respect to this land because if, after inquiry the Tribunal found in their favour, the Tribunal's recommendations would be mandatory rather than recommendatory. Further, any purchaser of Wharekauri would have full knowledge of this possibility by virtue of the caveat on the title and in the conditions of sale.

LEGAL SERVICES BILL

The Government has reintroduced the Legal Services Bill (first introduced October 1989) that will revise the way legal aid is paid and which will also cover aid to counsel appearing before the Tribunal.

The Bill provides that legal aid committees must assess the finances of any incorporations supporting the claim to see if such bodies should make a contribution to legal costs.

The Bill also provides that individual claimants can, in some circumstances, have their finances assessed.

The Government has indicated that it will seek to make further amendments to the Bill before it is passed. With regard to the Waitangi Tribunal, these amendments may include a requirement that the views of the Tribunal be sought when applications for legal aid from claimants are being considered by legal aid committees.

FINAL HEARING OF THE TE ROROA CLAIM

The ninth and final hearing of the Te Roroa claim was held at the Kaihu Memorial Hall (near Dargaville) in June 1991, two years after the first hearing.

Closing submissions were heard from claimant counsel, Crown counsel and counsel for the Historic Places Trust.

The claim covered a wide range of issues including Crown acquisition of land in the 1870s, protection and prevention of removal of the taonga of Te Roroa, protection and management of wahi tapu, provision of public services, protection of inland and coastal fishing resources and management of local conservation and recreation areas.

The Tribunal members hearing the claim were Judge Andrew Spencer (presiding officer), Sir Monita Delamere, Dr Ngapare Hopa, Mr John Kneebone and Mrs Mary Boyd, assisted by staff members Rose Daamen, Jacque Ngapera, David Colquhoun and Suzanne Woodley.

The Tribunal aims to complete its report for this claim by November 1991.

WAIROA KI WAIRARAPA CLAIMS

Tribunal member Bill Wilson chaired a conference on 6 June 1991 for all claimants of the 20 claims in Hawke's Bay through to the Wairarapa area.

If claimants consent, the Tribunal intends to deal with these claims collectively, at least for background historical research purposes.

Mr Wilson, with the assistance of Georgina Te Heuheu, will run a series of conferences through the year to establish and manage the research process.

This process of grouping claims and running judicial conferences to manage research is a means towards having research complete before hearings begin.

It is also a way for the Tribunal to maximise the number of claims heard on its small budget.

GEOTHERMAL CLAIMS

The Tribunal has received about 20 claims concerned with geothermal energy which it intends to begin hearing together in the coming year.

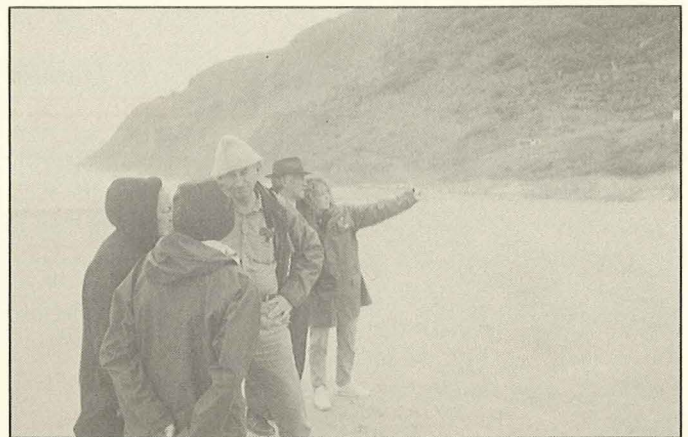
A conference chaired by Tribunal member Georgina Te Heuheu was held on 7 June 1991 involving all claimants with grievances concerning geothermal energy.

The common issue of the inquiry will be the right to the geothermal resource.

The Geothermal Energy Act 1953 currently provides that the overall control of geothermal energy lies with the Crown. This has been disputed by the claimants.

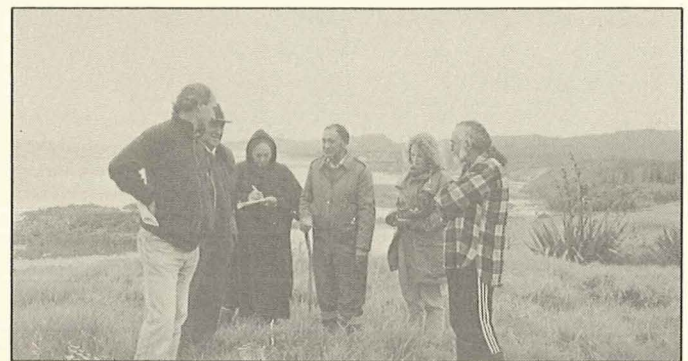
A related issue is how the proposed Resource Management Bill might affect the current law relating to geothermal energy.

Research on the history of geothermal energy law in New Zealand is being undertaken by claimants at the Tribunal's expense.



Maunganui Bluff

Left to right: Tribunal members Mary Boyd, Ngapare Hopa, John Kneebone, Sir Monita Delamere and staff researcher Rose Daamen



Koutu at Kawerua, Waipoua Left to right: Judge Andrew Spencer, Sir Monita Delamere, Ngapare Hopa, Howard Paniora (claimant), Rose Daamen and Alex Nathan (claimant)



Te Roroa claimants with their counsel and Crown counsel, Kaihu Memorial Hall

NEW CLAIMS REGISTERED

WAI 186

Claimants: Takutai Moana Wikiriwhi of Ngati Whatua and Huia Te Rore of Kaihu

Concerning: land at 15-17 Hurstmere Road, Takapuna, Auckland (filed in response to Aryan Equities Ltd and Abigail Investments Ltd for the removal of memorials on that land). **Date of registration:** 17 April 1991

Note: The Tribunal declined the application by Aryan Equities Ltd and Abigail Investments Ltd because section 8D of the Treaty of Waitangi Act 1975 states that the Tribunal may only recommend the removal of a memorial if no claims have been received for that land.

WAI 187

Claimants: Rangitina Otene Wilson of Ngapuhi, Te Rarawa and Tainui and others for the Awataha Marae Society Inc of Raki Pae Whenua (North Shore of Auckland)

Concerning: the transfer to Landcorp of the land on which the Awataha marae sits.

Date of registration: 24 April 1991

WAI 188

Claimants: Ropata Parore and descendants of the Rangatira Parore Te Awha and hapu of kaihu

Concerning: the Opanake, Kaihu and Waimata blocks.

Date of registration: 6 May 1991

WAI 189

Claimants: Syd Cormack QSM and Nona A Sinclair

Concerning: Whakatitiro Maori Reserves, Southland.

Date of registration: 7 May 1991

WAI 190

Claimants: R B Hargreaves for the Poro Ana hapu of Ngati Kahungunu ki Wairoa and the descendants of Raharuhi and Te Waru Tamatea

Concerning: confiscation of land of the Poro Ana hapu in Wairoa; destruction of Poro Ana as a hapu; destruction of carved houses. **Date of registration:** 13 May 1991

WAI 191

Claimants: Tamihana Matekino and others of Ngati Kahungunu

Concerning: confiscation of land from the Tarawera Block in Northern Hawke's Bay without fair trial or hearing.

Date of registration: 18 May 1991

WAI 192

Claimants: Walter Wilson and Albert Walker for Ngati Hinepua, Ngati Hine and Ngati Te Ipi

Concerning: Hereheretau Station, Wairoa District: ownership, the process of transfer of the land to the Crown and the decision-making process of the Crown in regard to this land. **Date of registration:** 20 May 1991

WAI 193

Claimants: Joseph Malcome for Ngati Pikiao

Concerning: Waitangi no.3 (Soda Springs) geothermal resource, Rotorua.

Date of registration: 21 May 1991

WAI 194

Claimants: Ken Eru and Tai Eru Morehu for Ngati Pikiao

Concerning: Taheke 8C Incorporated, geothermal resource, Rotorua.

Date of registration: 21 May 1991

WAI 195

Claimants: Toenga Curtis and Tai Eru Morehu for Ngati Pikiao

Concerning: Manupirua Baths, geothermal resource, Rotorua.

Date of registration: 21 May 1991

WAI 196

Claimants: Montegue Curtis for Ngati Pikiao

Concerning: Pukaretu Reservation, geothermal resource, Rotorua.

Date of registration: 21 May 1991

WAI 197

Claimants: David Te Hurihanganui Whata Wikiriwhi for Ngati Pikiao

Concerning: Rotoiti 15 Incorporated, geothermal resource, Rotorua.

Date of registration: 21 May 1991

WAI 198

Claimants: Alexander Malcome and Ken Uru for Ngati Pikiao

Concerning: Mourea Paehinahina, geothermal resource, Rotorua.

Date of registration: 21 May 1991

WAI 199

Claimants: Pirihihi Fenwick for Ngati Pikiao

Concerning: Ruahine-Kuhaina, geothermal resource, Rotorua.

Date of registration: 21 May 1991

WAI 200

Claimants: George Hakaraia and Matutaera Clendon for the Hauai Trust

Concerning: Hauai Lands, Whangarei.

Date of registration: 13 May 1991

WAI 201

Claimants: William Henry Christie, Tuehi Ratapu, Wiki Hapeta and Charles Cotter for Ngati Kahungunu

Concerning: traditional Ngati Kahungunu territory including all inland and coastal fisheries stretching from the Mahia Peninsula in the north to Cape Palliser and Lakes Onoke and Wairarapa in the south and inland to the south-eastern shores of Lake Waikaremoana and to the Kaweka, Kaimanawa, Ruahine, Tararua and Rimutaka Ranges in the west. **Date of registration:** 28 May 1991

WAI 202

Claimants: Bertram McLean and others for the Tamaki Maori Development Authority

Concerning: Judicial review proceedings against the Department of Maori Affairs.

Date of registration: October 1991

Reported: 1 June 1991

WAITANGI TRIBUNAL CURRENT HEARING PROGRAMME

*Note: These dates are subject to change.
Updated as at 31.5.91.*

Date	Claim No/Name	Place
1991		
Jun 10-14	143 Taranaki	Waitara
Jun 17-21	27 Ngai Tahu	Wellington
Jul 22-26	45 Muriwhenua	Kaitaia
Aug 12-16	143 Taranaki	
Sep 2-6	27 Ngai Tahu	
Sep 16-20	45 Muriwhenua	Kaitaia
Oct 14-18	143 Taranaki	
Nov 18-22	45 Muriwhenua	Kaitaia
Dec 2-6	143 Taranaki	
1992		
Feb 17-21	45 Muriwhenua	Auckland

HIGH COURT – TRANSFER OF BROADCASTING ASSETS TO STATE-OWNED ENTERPRISES

The New Zealand Maori Council and Others v The Attorney-General and Others (Broadcasting)
(1991) CP 942/88

High Court, Wellington, 15-18 April, 3 May 1991
McGechan J

The Maori plaintiffs brought this High Court action to prevent the transfer of assets and facilities to the state owned corporations, Television New Zealand Ltd and Radio New Zealand Ltd, because they believed the transfer would end any chance of securing a proper place for Maori language and culture in New Zealand broadcasting.

In 1988–89 the Government restructured the broadcasting industry by dissolving the old state run Broadcasting Corporation and creating state owned corporations to manage radio and television on primarily commercial lines.

The State-Owned Enterprises Act 1986 provided for the transfer of assets to these corporations and stated at section 9 that nothing in the Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.

The Maori plaintiffs sought judicial review and a declaration that the transfer of assets without inquiry into the extent of the Crown's Treaty obligations in broadcasting and without establishing any system to ensure that any transfer would not be in breach of Treaty principles was unlawful in terms of section 9.

The Court found that the Maori language has a central place in Maori culture, it is in a vulnerable state and Maori language use in broadcasting will contribute significantly to the survival of the language as a living language.

Maori language broadcasting will require Government assistance for the foreseeable future because it is not self-supporting on a commercial basis. Broadcasting assets are not entirely 'substitutable' - that is, it is doubtful whether the Crown would be able to provide, at a later date, adequate substitute assets to Maori for their language broadcasting needs by buying back assets which have been transferred to the new state corporations.

In relation to Maori radio the Court found that, despite a bad start, the Crown had in the end come to a result which was consistent with the principles of the Treaty. The reservation of frequencies for iwi, modest capital grants to establish stations, and the allocation of a significant percentage of the public broadcasting fee to Maori radio meant that it had established itself, and appeared to have reasonable future prospects. Therefore the assets needed by Radio New Zealand Ltd could be transferred to that corporation. This ruling was made on the understanding, however, that present levels of funding for Maori radio would continue.

Television assets were not released by the Court however, until the Crown had proposed an adequate scheme of protective reservations of transmission and production facilities to ensure that some could be utilised for the protection of the Maori language. Any protective scheme must

provide the ability for some Maori language programming to appear on television, in prime time, within a format that will be interesting to youth in particular.

Issues considered by the Court were:

Whether Maori language is a taonga

The Court found that this point had been properly admitted by the parties. The evidence before the Court, findings of the Waitangi Tribunal and the Maori Language Act 1987 made such an admission 'inevitable'. The Court also found that it was properly admitted that the Treaty guarantee in Article II covers Maori language.

The nature of the Treaty guarantee

The relationship between the Crown and Maori is in the nature of a partnership and carries the duty to act with the utmost good faith. This includes the Crown informing itself, which may involve consultation with Maori. Once informed, the Crown should consult and endeavour to negotiate agreed solutions. There is a right of redress where a wrong has occurred. There is a duty of active protection.

In this case the Crown was obliged to inform itself, since all available information was not at hand. If there were possible risks to the language in the restructuring the Crown proposed, it was obliged to devise modifications or safeguards not only to avoid present damage but also to facilitate future revival and development of the language. The Crown was then obliged to attempt to negotiate an agreement with Maori on the proposals. Unnecessary damage to the language had to be avoided.

When Crown action may be inconsistent with Treaty principles

The Treaty is not 'some hardnosed commercial contract, in which neither party will go further than the exact letter'. Consequently, the Crown's duties extend beyond mere preservation of the existing position. That which a partner reasonably can do, given prevailing constraints, a partner should do. Reasonableness in all the circumstances is the test. However, if the ultimate outcome of Crown action is in accord with the Treaty, then the Crown's earlier 'technical' breaches may be excused.

Whether the State-Owned Enterprises Act 1986 'clawback' provisions of sections 27-27D are a complete code of protection

The 'clawback' clause provides for a memorial or note to be placed on the title of all land that is transferred to a state owned enterprise by the Crown. This memorial enables the future return of the land to Maori ownership if the Waitangi Tribunal so determines.

The clawback scheme is the agreed solution for a particular case, even though it has general application. Parliament intended that the scheme should be a basic protection, without being necessarily exclusive. Other protective approaches are not foreclosed, especially in view of the likely public reaction if Maori successfully claim broadcasting facilities and seek their compulsory return at a future date.

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