

TE MANUTUKUTUKU

*Te Roopu Whakamana i te
Tiriti o Waitangi
Panui*



*Waitangi Tribunal Division
Department of Justice
Newsletter*

ISSN 0114-717X

Tekau ma toru Tihema 1991

Number 13 December 1991

DIRECTOR'S COLUMN

1991 – The Year in Review

Tena koutou

1991 has been another busy year for the Waitangi Tribunal and its staff. The end of year statistics are:

▲ total registered claims	261
▲ total claims reported	27
▲ claims withdrawn	2
▲ claims in proceedings	79
▲ claims in report writing	4
▲ claims referred for mediation	5
▲ claims referred for negotiation	5
▲ claims referred for Maori Land Court inquiry	1
▲ claims in preparation	29
▲ claims awaiting action	109

This time last year there were 167 registered claims.

To help speed the process a large number of claims have been joined together and are being dealt with concurrently. This explains why there are so many claims in proceedings.

As was the case last year, approximately 89% of the claims relate to land issues while the remaining 11% relate to issues such as fisheries, environment, energy and cultural matters.

Claims

The Tribunal continued hearings of the large claims involving land in Muriwhenua and Taranaki and it is expected that these hearings will continue for some time yet. The Chairperson, Chief Judge Edward Durie, is presiding over both these claims.

Hearings on the Te Roroa claims (WAI 38) – Judge Andrew Spencer presiding – were completed during the year. The Tribunal report is expected in the first quarter of 1992.

Hearings were also held on the fisheries aspects of the Ngai Tahu claim (WAI 27) – Deputy Chief Judge Ashley McHugh presiding – and the Tribunal report is expected to be issued early in 1992.

Also expected in the new year is the Tribunal report on the Pouakani claim (WAI 33) – Judge Ross Russell presiding.

Other matters dealt with by the Tribunal during the year included hearings and conferences concerning the Wellington tenths, the Chatham Islands claims, geothermal energy, railway lands, the sale of Landcorp property, the Mohaka river, Kahungunu claims, Napier inner harbour, the operations of the Crown Forest Rental Trust, and the proposed sale of endowment land in Auckland city.

As well, a number of claims remain in mediation:

Waikareao (WAI 86), Taemaro (WAI 116), Hauai (WAI 200) – all with Tribunal member Peter Trapski as mediator and Takapourewa – Stephens Island (WAI 95), and a claim concerning the Labour Relations Act (WAI 169) with myself as mediator.

Research

The resolution of grievances requires a solid base and it is the research effort which underpins the work of the Tribunal. Staff reports completed this year were:

- ▲ New Zealand law and the geothermal resource – Tom Bennion
- ▲ Exploratory report on the Te Rarawa ki Hokianga claim – Rose Daamen
- ▲ Land purchases and native reserves, Taranaki 1839–1860; Compensation Courts in Taranaki 1866–1874; Awards of the Compensation Court in Taranaki 1867–1885; Awards of the Fox-Bell Commission, Taranaki 1879–1885; Native reserves in Taranaki 1844–1848 – Janine Ford
- ▲ Pilot report – Taranaki land research project on native reserves – Aroha Harris
- ▲ Wairoa ki Wairarapa – Crown purchases in the Wairarapa to 1865 – Joy Hippolite
- ▲ Auckland Hospital endowment lands – Jane Luiten
- ▲ Background report on the Tuwharetoa te Atua Reretahi ki Kawerau raupatu claim – Cathy Marr
- ▲ An historical account of the confiscation of land in the Opotiki district – Buddy Mikaere
- ▲ Report on essential documents of the Royal Commission on surplus lands 1948 – Michael Nepia
- ▲ The Oruru area and the Muriwhenua claim: Crown policies towards Muriwhenua 1840–1853; Crown land purchases in Muriwhenua 1850–1865 – Barry Rigby
- ▲ Whangarae IC – Suzanne Woodley.

This list represents only a part of the large number of reports in preparation. Staff are also providing assistance to those Tribunals currently engaged in report writing.

Public relations and information service

Requests for Tribunal members and staff to attend speaking engagements continued throughout the year, both at home and overseas. Organisations addressed ranged from Rotary clubs to universities.

The Tribunal's library holdings have now been placed on a database enabling a faster response to information

requests, and the holdings themselves have been considerably expanded.

As expected we continue to have plenty of contact with claimants and staff have been kept busy meeting many requests for guidance on research and related matters.

Publications

The 'star' production this year was the three-volume report on the Ngai Tahu claim which was released in February. Professor Bill Oliver's book *Claims to the Waitangi Tribunal* was published in October to coincide with the Tribunal's sixteenth anniversary. *Claims* is a summary of all the claims heard and reported on up to mid-1991. The resource kits for schools have proved popular and production of these kits will be expanded as resources allow.

Agency liaison

We continue to rely on the cooperation and goodwill of the other agencies involved in resolving claims. Through their participation in various hui and seminars, staff have maintained these important relationships.

We are especially pleased to see our friends in National Archives move to their new premises in Mulgrave Street, which makes them much more accessible to us.

Administration

The Tribunal again performed within budget and in the current financial year is running to schedule. The Tribunal was one of the few government agencies to receive a budget increase, albeit a small one, and this has been allocated to the research area.

This year's heavy programme of hearings and conferences demanded performance of a high standard and I want to thank our small administration team in the finance and claims areas for doing such an excellent job.

Accommodation

In August, the Tribunal moved to new accommodation in the second floor of Seabridge House, Featherston Street, Wellington. The larger premises allow for a better layout of the research workspace and library facilities, as well as incorporating adjacent hearing rooms.

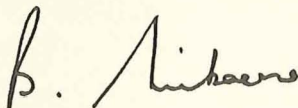
Conclusion

While there has been an increase of 64% in the number of claims before the Tribunal, it is clear that the scope of the claims being lodged is not as extensive previously. It is probable then that most of the major claims have now been received.

Government has signalled that it wants all major grievances dealt with by the turn of the century. Looking at our current resources that presents an interesting challenge. For that reason, it is likely that 1992 and years to follow will be characterised by solid grind as these larger claims are brought to a state of readiness for the Tribunal to deal with. That is not to say that smaller claims will be overlooked; a programme to address the backlog of claims will be a priority for the new year.

To all our readers, our very best wishes for a safe and happy holiday break. Na reira e hoa ma, tena koutou, tena koutou, arohanui ki a koutou katoa. Pai marire.

Buddy Mikaere
Director



NEW CLAIMS REGISTERED

WAI 234

Claimants: Matauri Bay marae trustees

Concerning: Sale of Motukawanui

Region: Matauri Bay, Kaeo

Received: 23 September 1991

WAI 235

Claimants: H M Mead for Ngati Awa

Concerning: Crown Forest Assets Act 1989

Region: Aotearoa

Received: 5 November 1991

WAI 236

Claimants: Te Kani Kingi for Ngaitai

Concerning: Crown purchase of land between Tamaki and Wairoa Rivers

Region: Auckland

Received: 3 October 1991

WAI 237

Claimants: R Taueki and W Taueki for Muaupoko ki Horowhenua

Concerning: Treaty breaches in Horowhenua

Region: Horowhenua

Received: 26 August 1991

WAI 239

Claimants: Pauline Tangiora for Rakai Paka Nuhaka and others

Concerning: Morere Springs, geothermal

Region: Wairoa

Received: 7 October 1991

WAI 260

Claimants: Toro E Waaka for Ngati Kahungunu

Concerning: Crown Forest Rental Trust

Region: Aotearoa

Date received: 11 November 1991

WAI 261

Claimant: E Uruamo

Concerning: Hospital endowment land at 4 Domett Ave, Auckland

Region: Auckland

Received: 7-11 October 1991

CROWN FORESTRY RENTAL TRUST HEARING

According to an agreement made in July 1989 between the Crown and Maori representatives, Maori may get funding from the Crown Forest Rental Trust for claims to the Waitangi Tribunal where forests are involved.

The arrangement originates from a settlement between the New Zealand Maori Council (NZMC), the Federation of Maori Authorities (FOMA), and the Crown. The settlement followed a High Court action in March 1989 which claimed that the Crown should not dispose of its forest assets without first protecting the interests of Maori with claims in the area.

The agreement allowed the Crown to sell the existing tree crop and lease the land until claims are settled. Rental from leases is paid into a Crown Forest Rental Trust and income earned on the capital is then available to assist claimants.

An urgent hearing, held on Monday 18 November 1991, inquired into two claims that have been registered with the Waitangi Tribunal concerning the alleged difficulty claimants are having in receiving funding. The claims were lodged by H M Mead for Ngati Awa and T E Waaka for Ngati Kahungunu. The claimants have the formal support of the Muriwhenua, Hauraki, Tuhoe, Tauranga Moana and Te Rarawa tribes.

Since the scheme was set up under the Crown Forests Assets Act 1989, the Crown has disposed of \$2 billion worth of forest assets which may be subject to Maori claims, while the trust fund, according to claimants, has distributed only \$11,000 in research money to one tribe. There was also argument about considerable administration costs that have been incurred.

At the hearing, it was established that both the Act and the trust deed were drafted in a cooperative manner between Maori and Crown. However, there was dispute over the reasons for the lack of distribution of funds; whether it was the fault of the Act, the deed, or the trustees at fault (although it was noted that a major problem appears to be the complicated application form).

An affidavit by B P Quinn, who has been closely involved in the Crown forestry asset sale in 1988 and ensuing negotiations, supported the view that the trust deed is not consistent with certain principles agreed in the original discussions.

The current operation does not allow distribution of funds and is therefore totally at odds with the original agreement.

Here are some of the key points listed by Mr Quinn that were agreed between the Crown and Maori negotiators (these are not direct quotes from his affidavit):

- ▲ it was in the best interests of all parties to resolve all claims against forest land as expeditiously as possible
- ▲ income earned on the trust's capital would be available to resource claims that do or *could* involve forest land. Scant evidence of a claim would be sufficient to receive funding
- ▲ claims against forest lands could likely be in lieu of other lands that would be difficult to return
- ▲ funding should be provided to assist the development of claims and that it was not the job of the trustees to decide the validity of the claim.

Furthermore, Mr Quinn notes, the clause in the trust deed which states that claimants may not be reimbursed by the trust for costs incurred in preparing a claim to the trust, is a contradiction of original intentions of the parties.

The forestry industry cannot develop until Maori interests are settled because until that time it has cutting rights only. The rightful owners, whether they be Maori or Crown, need to be established so the business of buying and developing can proceed.

In a memorandum issued to all parties the day after the hearing, the Tribunal stated: 'There is no argument that the disposal of Crown assets without an adequate protective scheme was a matter within this Tribunal's purview; the central issue here as we see it is whether the scheme is adequate in all the circumstances.'

The Tribunal agreed with the correctness of the trustees' position remaining neutral. As a result, after a request from counsel for Ngati Kahungunu at the hearing, the Tribunal

urged the Crown to negotiate a resolution with the claimants, in conjunction with NZMC and FOMA if possible, but without them if necessary.

The Tribunal reserved the right of any interested group to reiterate the claim should negotiations not succeed.

CROWN/MAORI CONGRESS WORKING PARTY ON RAILCORP SALES

In June this year, Maori claimants were alerted by a newspaper article to Railcorp's intention to sell by tender about 3000 blocks of land around the country, worth approximately \$200 million. At the claimants' request, the Waitangi Tribunal held an urgent hearing at which Railcorp was directed to supply Maori claimants with a list of properties for sale and to discuss the matter with claimants.

The Maori Congress, a national affiliation of tribes, acted quickly. At a number of hui, held between June and September this year, the Congress established iwi support for a joint working party comprised of Crown and Congress representatives, serviced by a joint secretariat. In October, the two parties signed an agreement designed to protect iwi rights under the Treaty of Waitangi in relation to the disposal of surplus railway lands.

For each piece of land, the iwi concerned will be identified by Congress and the secretariat. The iwi will then take part in discussions with members of Congress and staff from the secretariat.

The working party will categorise the blocks of land into:

- ▲ wahi tapu or land of other special cultural significance
- ▲ properties where no claim has been made by Maori, or where the claim has been waived
- ▲ properties where a valid specific claim has been established and compensation is sought in lieu of return of the property
- ▲ properties where a valid specific claim has been established and claimants wish properties to be returned
- ▲ properties that fall within a rohe where a valid general claim has been fully or partly established.

If all four members of the working party agree, the land will either be returned to Maori (or some other compensatory option agreed upon) or put up for sale.

Any settlements reached will be in the nature of 'down-payments' from the Crown and will not prejudice tribes in their wider claims to the Waitangi Tribunal.

If the joint working party cannot reach an agreement (a possibility that members hope will not eventuate), the parties will select a mediator. If that is not possible, the Chairperson of the Waitangi Tribunal will nominate a mediator. The mediator will report to the Minister of Justice, who, after consulting with the Secretary for Congress, may accept or reject the mediator's recommendation.

The agreement is a totally innovative and cooperative means of resolving Treaty grievances. It is, in effect, a pilot project which, if successful could set an example for settling other Treaty of Waitangi claims. Sharing research and other resources will be a significant saving for taxpayers. The working party feels that the project's success may depend largely on the will of everyone involved to make it work.

Land where there is known buyer interest will be investigated first. The working party is beginning with the Auckland area. The Crown's budget for this scheme is limited, and it is hoped that all blocks of land will be successfully dealt with within two years. Ngai Tahu, Ngati Whakaue and Tainui are already involved in negotiations over confiscated lands that encompass Railcorp land. Therefore, they have not taken an active role in this agreement.

All queries should be directed to: Crown/Congress Joint Working Party, PO Box 12 318, Wellington.

WAITANGI TRIBUNAL CURRENT PROGRAMME

*Note: These dates are subject to change.
Updated as at 12/12/91.*

Date	Claim No/Name	Event	Place
1992			
Feb (dates to be arranged)	201 Wairoa ki Wairarapa	Hearing	
Feb (dates to be arranged)	143 Taranaki	Hearing	
25-29 May	143 Taranaki	Hearing	Taranaki
3-7 August	45 Muriwhenua	Hearing	
7-11 Sept	45 Muriwhenua	Hearing	Auckland

KAIMAUMAU REPORT

The Tribunal held an urgent hearing into the Muriwhenua land claim in October in response to the proposed sale of Landcorp land at Kaimaumu. Appropriate Ministers received Tribunal reports following the hearing.

The land has subsequently been sold with a memorial on its title which guarantees its return to Maori ownership if, after a full inquiry, the Tribunal so recommends.

Although the protective memorial was guaranteed by the Treaty of Waitangi (State Enterprises) Act 1988, the Tribunal saw the need to recommend that the Crown take steps to prevent the sale, or failing that to prevent mining or other major developments by the new owners, until a full inquiry has been completed. Such a move is necessary because the 'claw-back' provision for claimants is not, in this case, adequate protection. Nor was it intended, in the view of the Tribunal, that that legislation would be sufficient in all cases.

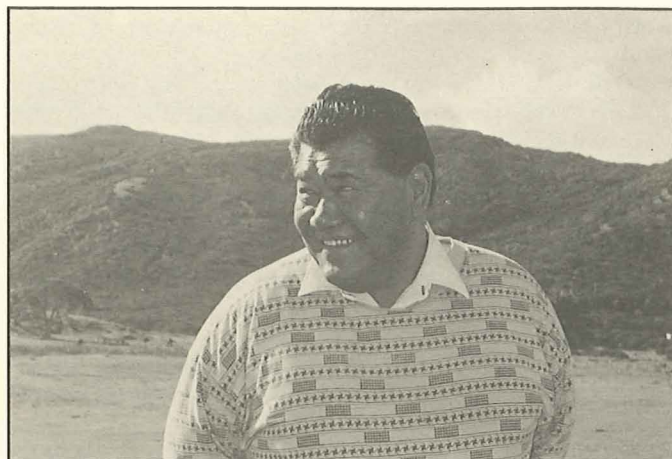
The report stated that, 'the sale could lead to land uses inimical to the hapu's interests, with developments of an irreversible kind, that no subsequent resumption by the Crown could remedy.' It also noted that, 'in all fairness, the Crown should consider not only the Maori party, but would-be purchasers whose own plans may thus be set aside, and also the general tax-paying public since the compensation paid to purchasers will likely exceed the price they originally paid.'

As early as December 1986, the Waitangi Tribunal formally recommended to the Crown that it withhold the transfer to state-owned enterprise control of any Crown land in Muriwhenua until the Tribunal completed its inquiry. However, without prior warning to claimants, the Kaimaumu land was advertised for sale on 7 September 1991 with 25 September 1991 as the closing date for tenders. Claimants wrote to the Ministers of Justice and Maori Affairs in September and October but no substantive reply had been received at the time of the hearing.

Earlier this year, the Tribunal declined to recommend the withdrawal from sale of SOE land on the Chatham Islands. The Kaimaumu report explains the Tribunal's different reactions to what may appear to be similar circumstances. The Tribunal understands that the resumption scheme was designed to cover situations like that of the Chathams where the claim has not been heard. The Muriwhenua claim, on the other hand, has been in hearing for over a year, most of the claimant research has been produced and the legitimacy of the claim is well established.

XMAS AT THE TRIBUNAL

The Waitangi Tribunal offices will close on 20 December 1991 and re-open on 6 January 1992.



Matiu Rata, Muriwhenua claimant and the person responsible for introducing into parliament the bill that became the Treaty of Waitangi Act 1975. Since the Kaimaumu sale, Mr Rata has held talks with politicians about establishing some means to prevent further sales of land in the far north before the Tribunal has completed its inquiry.

REVISED PROGRAMME FOR MURIWHENUA CLAIM

The Muriwhenua land claim inquiry has been divided broadly into 19th century and 20th century issues.

19th century programme

After claimant and Tribunal-commissioned evidence has been filed, claimant counsel will formulate the issues it wishes the Crown to respond to. The Crown has agreed to respond by June 1992.

- | | |
|----------------|---|
| June 1992 | The Tribunal will hold a conference of parties to settle the issues |
| August 1992 | Hearing |
| September 1992 | Hearing of final submissions on 19th century issues |
| November 1992 | Tentative report date for 19th century issues. |

The Tribunal will then consider 20th century issues for a subsequent report.

Note: the February Muriwhenua land hearing is cancelled



Farewell to researcher

Janine Ford left the staff of the Tribunal this month after being employed as a researcher since July 1990. Janine worked mainly on the Taranaki claim. We wish her all the best.

If you want to receive your own copy of *Te Manutukutuku*, please fill in this form. Your name will be added to the mailing list.

Name _____ Address _____

Return this form to the Information Officer,
Waitangi Tribunal, PO Box 5022,
Wellington / Te Whanganui-a-Tara

Please advise the Waitangi Tribunal Division of any changes of address