



# TE MANUTUKUTUKU

TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

Haratua/Pipiri 1995

Number 33

May/June 1995

## Report Finds That Te Whanganui-a-Orotu Sale Breached Treaty

### CONTENTS

Taranaki hearings underway

2

The Tribunal's current hearing programme  
Details required for official Tribunal investigations

3

No more crown asset sales recommended

4

Find out more about land confiscations  
History with Tainui settlement

5

New researchers for Tribunal

6

New claims registered

7

Indigenous flora and fauna report finds controls needed for 'bio-prospecting'

8

**T**e Whanganui-a-Orotu, also known as the Ahuriri Harbour or Napier Inner Harbour, has been the subject of numerous petitions to Parliament and inquiries over the last 120 years.

The Tribunal has now completed the most comprehensive inquiry to date and its findings were set out in a recently released report.

The claim was granted urgency because one of the issues raised concerned leasehold sections, owned by local authorities in the Napier area, being made freehold.

The initial claim arose because the Crown included Te Whanganui-a-Orotu in the purchase of the Ahuriri block in 1851, even though it was outside the purchase area. Then in 1874 and 1876 most of the harbour was vested in the Napier Harbour Board as a harbour endowment.

The complexity of the claim has been increased by subsequent reclamation, land development, growing pollution, uplifting of the inner harbour in the 1931 earthquake and Napier's expansion. By the early 1970s little remained of this traditional Maori foodstore, resource area and economic base.

The report finds that the Crown breached a number of Treaty principles, including:

- Compulsorily taking islands under Public Works legislation, which were clearly outside the purchase and recognised by statute as customary Maori land (without payment of any compensation).

- Depriving Maori of access to wahi tapu and use of Te Whanganui-a-Orotu for fishing, shellfish gathering, transport and other purposes.
- Permitting serious environmental damage and destruction.
- Failing to ensure, by legislation or otherwise, that Maori had an effective role in the conservation and resource management of Te Whanganui-a-Orotu in accordance with their status as tangata whenua and Treaty partners.

The report recommended that as an interim measure, there should be no further alienations of Crown or state-owned enterprises land within the pre-1851 boundaries of Te Whanganui-a-Orotu.



Te Whanganui-a-Orotu from the north by Emma Hamilton, circa 1908.

Proposals for the return of Crown land to Maori and the establishment of a fund as compensation for parts of Te Whanganui-a-Orotu now owned privately or by local authorities also formed part of the report.

A further hearing to hear submissions on possible remedies has been tentatively set down for the end of October 1995.

## From the Director ...

### The Importance of Research

**T**ēnā koutou. In May on Waiarau marae, Opotiki, the Tribunal heard claimant evidence for Wai 339, on Hiwarau C block, and Wai 225, the Matahina F block claim. Tribunal chairperson, Chief Judge Edward Durie congratulated claimant counsel, Stephen Clark and David Ambler, on the standard of the research submissions placed before the Tribunal.

The Chief Judge said the submissions, which were supplemented by preliminary Tribunal research, had been well prepared and presented. The Tribunal was grateful because most of the work "had already been done", and this underlined the value of having research material prepared well in advance of hearings.

### Taranaki Hearings to Resume

Tribunal hearings on the Wai 143 Taranaki claims resumed on 12-15 June when submissions from third party interests and claimant groups were heard. Counsel for the Taranaki claimants, Phillip Green, made initial closing submissions on the claim.

The Tribunal still has a lot of work to do on the Taranaki claims, including research and reporting on the 28 ancillary or discrete claims arising from earlier hearings. These concern issues such as land compulsorily acquired under the Public Works Act and resource management grievances. A team of four researchers has been assigned to this work, which should be completed by the end of the year.

### Raupatu Land Banks

In response to a Tribunal recommendation, the Minister for Treaty Negotiations, Hon Doug Graham, announced the establishment of 'land banks' within the boundaries of the raupatu claims. Surplus Crown lands in these areas will be held in land banks as a possible future settlement option. This new policy, effective immediately, has been welcomed by claimants.

**Buddy Mikaere**

*Director*

## Tribunal Hearing for Taranaki Claims

**T**he Waitangi Tribunal heard claims under Wai 143 from Taranaki at Pakaraka Marae, Maxwell, on 12-15 June.

Wai 143 is a large claim encompassing a number of claims in the region. The claims have been grouped to ensure all issues relating to Taranaki are considered at the hearings.

The claims mostly concern Crown purchases prior to the 1860s, the Taranaki wars and the confiscation of lands from that time. Matters relating to the return of some of the confiscated lands, and the way in which lands returned have been administered (by the Public, Native, then Maori Trustee), are also covered.

Evidence was presented to the Tribunal by interested parties, counsel for the claimants and other claimants.

Hugh Barr (President, Federated Mountain Clubs) gave evidence on behalf of the Federated Mountain Clubs of New Zealand, which is an interested party. He is a well known lobbyist for continuing Crown control of the Conservation Estate.

Other interested parties such as the West Coast Settlement Reserves Lessees Association and Mr and Mrs Wells of Pukearuhe, also presented submissions to the Tribunal.

Philip Green, counsel for the claimants, spoke to an amended statement of claim. This statement is a culmination of all claimant research on the areas of concern.

Representatives from Nga Rauru, Ngati Ruanui, Ngati Haumia and Pakakohi were also heard.

DEPARTMENT OF  
**JUSTICE**  
NEW ZEALAND

*Te Manutukutuku* is published by the Waitangi Tribunal Division,  
Department of Justice PO Box 5022 Wellington  
Telephone 04-499 3666 ♦ Fax 04-499 3676 ISSN 0114-717X  
*Production by Huia Publishers, Wellington*

# The Essentials of Making a Claim

**A** claim needs to contain certain elements before the Tribunal can begin an official investigation. Often claims do not contain the essential points needed. If you are making a claim to the Tribunal, make sure all of the following points are covered.

## 1. Make it clear that the claimants are Maori

Claimants can either state this or refer, where relevant, to their important iwi or whanau.

## 2. Make sure the individual or individuals bringing the claim are named

Claims must identify at least one individual. Claims may be brought on behalf of any group to which the individual claimants belong, such as whanau, hapu, iwi, trust boards, trusts, incorporations or incorporated societies, runanga or other iwi authorities.

## 3. Make sure the claim refers to actions of the Crown

A claim must be made against the Crown or in respect of legislation or Crown policy and not against a private individual or organisation. For example, claimants concerned with a sewage scheme must make the claim

against the legislation or government policies that allow the scheme to go ahead, not against the local authority. A claim can also be made if the government has not acted or provided legislation or policies to maintain Treaty principles.

## 4. Make sure the claimant shows clearly that they are likely to be prejudicially affected

Claimants need to refer generally to the way or ways that the group of Maori people represented by the claimant(s) have or may suffer harm as a result of Crown actions.

## 5. Make sure the Treaty of Waitangi is mentioned

This point is very easy to forget. Claimants should ensure that the claim refers either generally or specifically to the Treaty and its principles.

## 6. Send the claim to: The Registrar, Waitangi Tribunal, PO Box 5022, Wellington

The Waitangi Tribunal has Practice Notes available that can be used as a guide to matters of procedure before the Tribunal. For copies, write to the Communications Manager, Waitangi Tribunal Division, PO Box 5022, Wellington.

### NGAPU KA

**School Resource Kits**  
The Waitangi Tribunal has produced a set of school resource kits to aid teachers and students learn about the social and justice issues which have been documented by the Tribunal. The resource kits are in colour and have 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). They can also be used in senior school history, geography, legal and cultural studies.

Each kit contains 30 copies of the resource, plus teachers notes and student exercises.

Resource kits available:

Set 2: Motunui-Waitara environmental pollution claim, Taranaki.

Price: \$35.00

Set 3: Te Roroa historical land loss claim, Northland.

Price: \$37.50

Set 4: Orakei. Price: \$37.50

Copies available from the Communications Manager, Waitangi Tribunal, PO Box 5022, Wellington.

## WAITANGI TRIBUNAL CURRENT HEARING PROGRAMME (as at 26 May 1995)

These dates are subject to change

**24-28 July Wai 449**

*Kiwifruit Marketing, Auckland*

**7-11 August Wai 32**

*Chatham Islands, Wellington*

**14-18 August Wai 447**

*Fisheries Allocation, Wellington*

**21-25 August Wai 145**

*Wellington Tenth, Wellington*

**4-7 September Wai 64**

*Chatham Islands, Wellington*

**18-22 September Wai 46**

*Ngati Awa, Whakatane*

**9-13 October Wai 411**

*Tarawera Forest, Kawerau*

**30 October-3 November Wai 55**

*Te Whanganui-a-Orotu, Wellington*

**13-17 November Wai 64**

*Chatham Islands, Wellington*

**20-24 November Wai 62**

*Tuwaharetoa ki Kawerau, Kawerau*

**4-8 December Wai 64**

*Chatham Islands, Wellington*

**11-15 December Wai 64**

*Chatham Islands, Wellington*

## PUBLICATIONS

The Waitangi Tribunal has published many reports, resource kits and research information. These include: reports on specific claims, occasional publications on issues, and research reports.

A list of publications is available from the Communications Manager, Waitangi Tribunal, PO Box 5022, Wellington.

## Recommendation for No More Crown Asset Sales in Eastern Bay of Plenty

**T**he Waitangi Tribunal has found that the sale of Crown assets, without a prior protective arrangement agreement with iwi, is in breach of the Treaty.

It made this finding while hearing claims in the eastern Bay of Plenty, and has recommended to Government that no further Crown asset sales should proceed in this area until an agreed protective arrangement is in place.

The recommendation is contained in a report released to Crown ministers on 5 May. It has been made even though these hearings are only partially completed.

The Tribunal says it was satisfied that two of the claimant groups, Ngati Awa and Tuwharetoa ki Kawerau, "have significant and compelling claims which, unless there is an equally compelling rejoinder, are likely to be well founded and to justify substantial compensation".

The Tribunal report says that "in anticipation of compensation, the claimants contend that the sale of local Crown assets prejudices their chances of securing future land returns".

Claims in the eastern Bay of Plenty mainly involve land confiscated after the fighting there in the 1860s. Lawyers for the claimants have argued that the confiscations, and the imprisonments and reloca-



Te Hau Tutua, Eric Eruera, Rangihora Ratahi and Hinearokura (Ruby) Bluett outside Kokohinau Marae, Te Teko, during the first hearing. Photo credit: Onehou Thrupp

tions which followed, were contrary to the principles of the Treaty.

The Tribunal says that the confiscations in the eastern Bay of Plenty were "as large in this district as elsewhere". Lands were taken though few Maori were involved in the fighting.

It also accepted the claimants' submission that a 'land bank' – where Crown land is held back from sale – should be established.

The Tribunal says the eastern Bay of Plenty inquiry should be reported on within a year.

## ALL SALES OF CROWN PROPERTIES STOPPED

**A** further development just announced on 31 May by the Minister in Charge of Treaty Negotiations, the Hon Doug Graham, is the Government's decision to stop all future sales of Crown-owned properties located within the raupatu boundaries.

This has an immediate effect in Taranaki, Bay of Plenty, Mohaka-

Waikare and Tauranga.

The raupatu were lands confiscated by the Crown under last century's New Zealand Settlements Act.

The Government accepted that further sales would prejudice negotiations to settle outstanding raupatu land claims.

Mr Graham said, "Claimants have been understandably concerned that the Crown might continue to sell sur-

plus land, reducing the amount of Crown land still available to be used in settlements.

"Once land is in private ownership, it cannot be part of a settlement package."

The announcement means that there will be no more sales within the raupatu boundaries without the consent of the relevant claimant.

## LAND CONFISCATION ACREAGES

**L**ands affected by the Government decision on the sale of surplus Crown properties are those that were covered by the New Zealand Settlements Act 1863 (and amendments) and not included in the Waikato-Tainui Settlement.

These are: Taranaki, Tauranga, Eastern Bay of Plenty, Mohaka-Waikare, and the Wairoa and Waiuku blocks.

Not all the land within the outer boundaries of the areas affected by the Act was kept by the Crown. Some

was later returned to Maori, but this was often not to the original owners.

In addition, some of the land affected by the confiscations was purchased from Maori by the Government. Many of these purchases bore the character of forced cessions, and some excluded Maori who had owned the land under customary title before the confiscation. The acreage of the lands concerned are shown in table 1.

The lack of research on the Mohaka-Waikare confiscation means

that final figures have not been established. While most of the land was granted to Maori, many of the customary owners were excluded from the grants. The area confiscated is likely to have been between 250,000-350,000 acres. An 1871 return gives a figure of 43,233 acres as retained by the Crown.

The Waiuku and Wairoa block confiscations were part of the Waikato confiscation and have been excluded from the Waikato-Tainui settlement. This acreage is not yet known.

**Table 1:**  
Acreages involved in each confiscation area

	Area originally confiscated (acres)	Area purchased from Maori (acres)	Area returned to Maori (acres)	Area finally retained by the Crown (acres)
Taranaki	1,275,000	557,000	256,000	462,000
Tauranga	290,000	93,188	147,062	49,750
Eastern Bay of Plenty	448,000		230,600	211,060

(Figures from the 1927 Sim Commission)



Photo credit: Trevor Ward

The Rt Hon Jim Bolger and Dame Te Atairangikaahu sign the historic document.

**P**rim Minister, Rt Hon Jim Bolger and Te Arikiniui, Dame Te Atairangikaahu, made history at Turangawaewae Marae in Ngaruawahia on 22 May with the signing of the Deed of Settlement between the Crown and Waikato-Tainui over the raupatu land claim.

## Historic Signing of Tainui Settlement

This follows the Crown's conclusion that land confiscations in the Waikato after the hostilities of 1863-1864 were unjust and a Treaty breach.

Negotiations to finalise the settlement have been underway since late last year when the two parties agreed to matters for settling the claim.

The settlement consists of two parts: a crown apology and redress.

In the apology the Crown acknowledges the Treaty breach in its dealings with the Kingitanga and Waikato, and it expresses regret for the loss of lives from the invasion and the resulting devastation of property and social life.

Confiscations of land and resources under the New Zealand Settlements Act 1863 are acknowledged as wrongful. This had a crippling

impact on the welfare, economy and development of Waikato.

The Crown also recognises that confiscated lands have made significant contributions to New Zealand's wealth and development, while the Waikato tribe has been alienated and deprived of any benefit.

The redress has a value of \$170 million, including both cash and land.

Over the next five years, approximately 39,000 acres of Crown land will be returned. The balance of the value of the land will be put in a trust fund for acquiring more land.

Excluded from the settlement was the Maramarua forest for which a number of overlapping claims have been lodged. A conference to discuss granting urgency and a hearing date for these claims is being held in June.

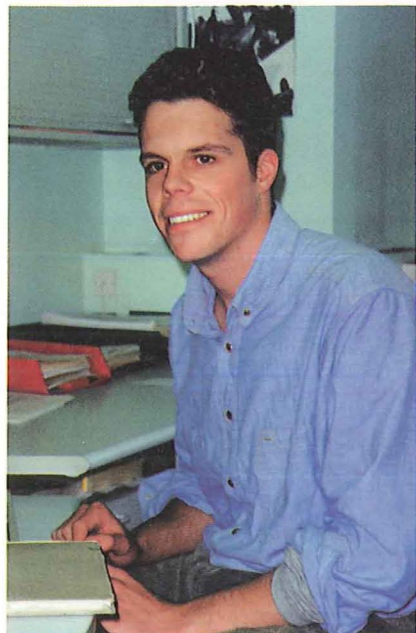
## Welcome to New Staff

**T**he Division recently appointed and welcomed four new contract researchers, **Ralph Johnson, Ben White, Giselle Byrnes and Paul Goldsmith.** They have been appointed on 12 month contracts.

### Ralph Johnson

Ralph recently shifted from Tamakimakau-rau where he studied and completed his Masters Degree in New Zealand History at Auckland University. His thesis examined interactions between Nga Puhī and British military forces during the Northern War, 1844-46.

As well as historical research, Ralph enjoys an interest in New Zealand archaeology, disciplines which he considers have been kept separate for too long. Ralph has been contracted to research Taitokerau claims.



### Ben White

Ben was educated and raised in Christchurch. He has a BA in History and Religious Studies and has also completed honours papers in History and Maori as part of a MSc in Resource Management. Ben says he was interested in working for the Tribunal because of his interest in resource management issues from a

Maori perspective. His major research interest has been conflicts surrounding the use of the conservation estate in the settlement of claims.

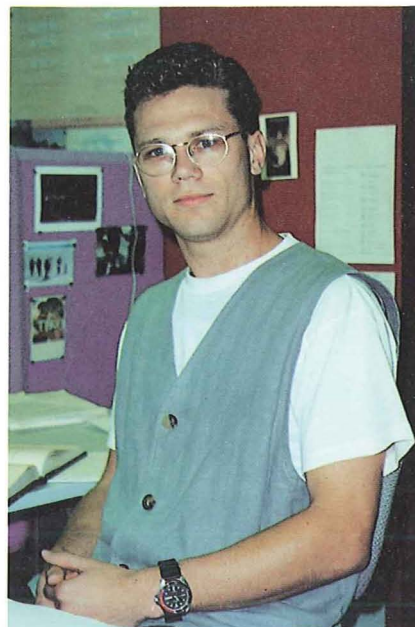
Ben will be looking at resource issues as part of his work on the Taranaki ancillary claims.



### Paul Goldsmith

The Waitangi Tribunal was impressed by Paul's guitar rendition of 'Tutira Mai Nga Iwi' at the recent powhiri for the new contract researchers. Although classically trained for piano, Paul is a welcome addition as the Division is rather short of guitarists. Tae Kwon Do is another interest for Paul.

Originally from Auckland, Paul has an MA in History from Auckland University where he studied 19th century New Zealand history and William Colenso.

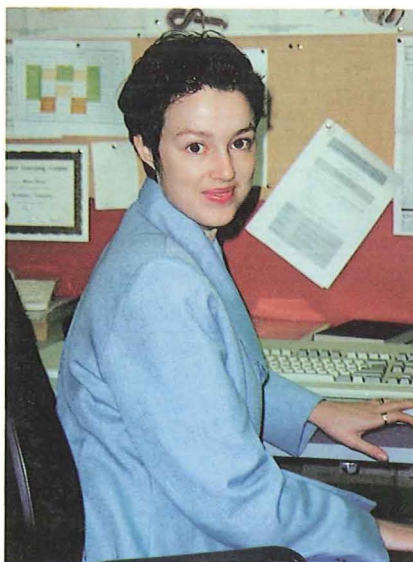


### Giselle Byrnes

Giselle comes to the Tribunal from Auckland University History Department where she was a part-time lecturer on New Zealand History.

She completed her PhD at Auckland looking at *Inventing New Zealand: Surveying, Science and the Construction of Cultural Space*.

Giselle, who grew up in Tauranga, also has an MA in History from Waikato University.



## NEW DOCUMENT EXCHANGE (DX) NUMBERS

The Document Exchange has allocated new numbers to all DX members. The new directory and service guide book will be sent out to members shortly. You should note that these numbers came into effect on 2 June 1995. The Waitangi Tribunal Division's new DX number is: SP20085, Wellington Central.

## NEW CLAIMS REGISTERED

Wai No.	Claimant	Concerning
Wai 501	Wahiao Raymond James Gray	Tarawera Forest, Bay of Plenty
Wai 502	Mahlon Kaira Nepia	Tongariro National Park
Wai 503	Michael Tane O'Brien	Kaimai, Tauwharawhara, Te Papa Paengaroa, and Whaiti Karanui blocks, Bay of Plenty
Wai 504	Tamihana Akitai Paki and Pauline Ramari Smith	Te Mata Ruakaka, Takahiwai, Maungakaramea, Poupouwhenua, Motutere Island, Te Mahe and Waipu land blocks, South Whangarei
Wai 505	Aroha Ruru Waitai	Wanganui, Waitotara, Kai Iwi, Wanganui/Taranaki
Wai 506	Charlie Manahi Cotter	Patunamu State Forest, Wairoa
Wai 507	Owen R Lloyd	Mangatu block, Gisborne
Wai 508	Whitireia Kaihau	Ngati Te Ata matters, Waikato
Wai 509	Norma Moetu Pakau	Tuhoe lands, the Urewera
Wai 510	Anaru Kira	Taitokerau Northland Conservancy plan
Wai 511	Chris Koroheke	Matapouri Bay, Whangarei
Wai 512	Nari Pai	Laws concerning Maori land, Aotearoa

## Shortland Papers Available for Research

**A** collection of manuscripts by Edward Shortland is now available at the Waitangi Tribunal Division Library in Wellington.

The collection consists of 28 volumes of papers on Polynesian culture and languages, mythology and religions. There are also writings on Melanesian and South African languages.

Shortland is described in the *New Zealand Dictionary of Biographies* (1769-1869) as the first anthropologist of the Maori. He came from Devonshire in England to New Zealand, and was appointed private secretary to Hobson. In 1842 he became police magistrate and sub-protector of aborigines, later becoming protector.

From 1843-1844 he was an interpreter during the South Island land claims investigations. Shortland himself reported on many claims and took a census of the South Island Maori.

The original Shortland Papers are at the Hocken Library in Dunedin, and the copies held at the Waitangi Tribunal are the only ones in the North Island.

Tribunal Information Manager, Brett Sinclair, says, "They're a neces-

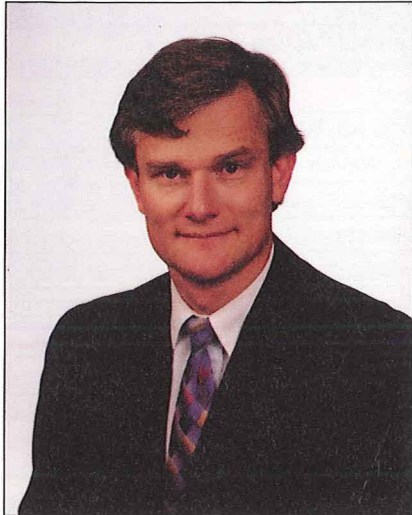


sary resource that should be available to all researchers".

Anyone who is interested in the papers can view them at the Tribunal offices. If you want to find out more, contact Brett Sinclair at the Tribunal.

Information Manager, Brett Sinclair and researcher, Anita Miles examine the Shortland papers.

## Report on Indigenous Flora and Fauna



Report author, Peter Dengate Thrush.

**A report on the Indigenous Flora and Fauna Claim, Wai 262, was recently submitted to the Tribunal. This article is a broad summary of its contents.**

The report was commissioned by the Waitangi Tribunal to investigate four areas:

- policy and practice behind the creation of reserves for the protection of flora and fauna and Maori input into this;
- policy and practice for the 'gazetting' of protected species and Maori input;
- the current regulatory regime for managing indigenous species and Maori input;
- law and policy behind the commercial exploitation of indigenous species and their genetic material and Maori input into this.

Written by barrister/patent attorney, Peter Dengate Thrush, the report discusses the statutory framework used to create reserves and preserve indigenous flora and fauna in New Zealand.

Wai 262 claimants generally allege that the Crown breached the Treaty through the removal of te tino rangatiratanga over native flora and fauna,

This resulted in the loss and alienation of iwi lands and waters which nourished flora and fauna, and the creation of reserves that removed land from iwi Maori control.

The concept of 'kaitiakitanga' was denied to claimants through the establishment of protected species, and the delegation of regulatory powers over native species effectively removed their right to manage their own native flora and fauna. The claimants also state that the selling, disposing and exporting of species of indigenous flora and fauna were contrary to the Treaty.

The report touches on Maori input into reserves and protected species policies. In some situations this has involved Maori making representations to select committees set up to develop legislation for enactment.

*Controls are needed to protect New Zealand plants and animals from 'bio-prospecting' by foreign interests.*

In other situations, an obligation to consult with Maori is imposed on decision-makers by legislation itself. For example, the Resource Management Act 1991 and to some extent the Conservation Act 1987 do this. The Reserves Act 1977 also includes Maori input where Maori land or an interest in Maori land is involved.

The report outlines New Zealand's international treaty obligations to protect endangered and protected plants

and animals. Tropical timber, blue fin tuna, wild flora and fauna, Antarctic marine living resources, the natural resources and environment of the South Pacific and biological diversity are all covered by treaties to which New Zealand is a party.

Intellectual property law is covered generally in relation to the protection of 'genetic material' and 'issuing of proprietary rights'. Patents, plant variety rights, trademarks, copyrights and trade secrets, and their application to naturally-occurring species, are explained.

This matter is of concern to Maori who believe that Maori had a prior interest in indigenous species, and that these species are a taonga under Article Two. Moves by the Crown to undermine this interest or to assign property rights over this taonga without recognition of tino rangatiratanga are therefore claimed to be a Treaty breach.

The report states, however, that "... because of the requirements of novelty and the 'found in nature' exceptions, it is not now possible for anyone to patent any of the species referred to in the claim".

The issue of proprietorship is more contentious because it rests on a decision over who is entitled to ownership of the genetic material.

The report looks at steps taken in foreign countries to identify and protect indigenous plants and animals and comments on New Zealand's obligations and options under the Biodiversity Treaty. It concludes that controls are needed to protect New Zealand plants and animals from 'bio-prospecting' by foreign interests.

As a next step, the Tribunal intends to publish the report and to seek submissions on its contents.

### Free Publications

**F** Booklet: *A Guide to the Waitangi Tribunal*

**R** Poster: *Treaty of Waitangi*

**E** Book: *Claims to the Waitangi Tribunal* by Bill Oliver. This book summarises the major claims to 1991 and outlines the status of each one.

**E** These publications are available free from the Communications Manager, Waitangi Tribunal, PO Box 5022, Wellington.