TE RŌPŪ WHAKAMANA O TE TIRITI O WAITANGI

TE MANUTUKUTUKU

Kia puta ki te whai ao ki te ao mārama *From the world of darkness moving into the world of light* ISSUE 61

Waitangi Tribunal

CONTENTS PAGE

A Message from the Director

Kei te mihi, kei te tangi ki ngā mate, rātou kua wheturangitia. Haere okioki atu ki te waonui a Tāne. Ngā whare e tū nei, puta noa i te motu, tēnā kotou. Papatūānuku e takoto nei tēnā koe, ara tēnā hoki koutou katoa. E rau rangatira mā mai te raki, tae atu ki te tonga, mai te rāwhiti tae atu ki te uru, he mihi whakahirahira kia koutou katoa.

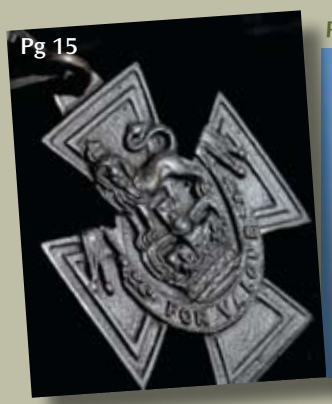
Welcome to the Tribunal's official newsletter, Te Manutukutuku. It is some time since our last issue was published, in 2004, and I am pleased to welcome it back on the scene.

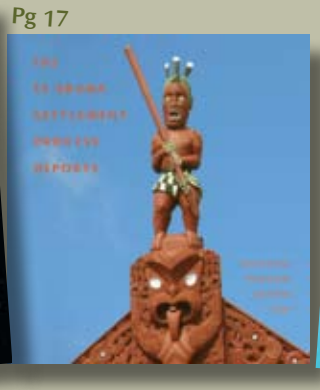
Some important landmarks have been passed in the interim. October 2005 saw the thirtieth anniversary of the Tribunal's creation and, two months later, the twentieth anniversary of its empowerment to hear historical claims. Much else has happened. Members and staff have come and gone, many hearings have been held, and reports written and released (19 of them in total since 2004). Our work programme for the immediate future looks just as full.

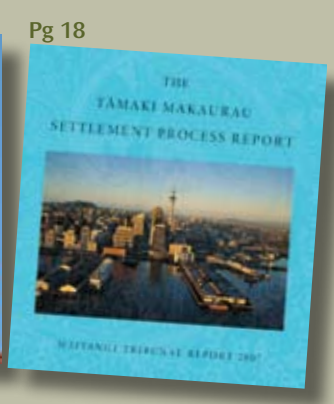
This special relaunch edition of Te Manutukutuku focuses on the reports released by the Tribunal since the last newsletter. The next issue will review the Tribunal's other activities since 2004, and look ahead to what is coming up.

Director Darrin Sykes presents the Hauraki Report, June 2006.

Darrin Sykes
Director, Waitangi Tribunal







Special edition

Waitangi Tribunal reports since 2004

In this special edition we profile the large number of Waitangi Tribunal reports issued since mid-2004. During this period 19 reports have been released, of which five are major district or regional inquiry reports dealing with the full breadth of historical claims across sometimes wide geographical areas:

- The ***Te Raupatu o Tauranga Moana*** report (August 2004) traced the process and impact of raupatu (land confiscation) on Māori in the Tauranga district.
- The ***Tūranga Tangata Tūranga Whenua*** report (October 2004) considered the claims of Māori in the Tūranga (Gisborne) district. The report paid particular attention to the actions of Te Kooti and the colonial forces during the late 1860s, and to the native land laws and the activities of the Native Land Court in the district.
- The ***Kaipara Report*** (January 2006) examined the purchasing of Māori land in that district, and the impact of the hearings of the Native Land Court on the tribes of Kaipara.
- The ***Hauraki Report*** (June 2006) examined all claims in the Hauraki district, including those related to gold mining, land purchasing, and the Native Land Court.
- ***He Maunga Rongo*** (June/July/November 2007), covering the Central North Island inquiry, explored generic issues arising from claims in the Taupō, Rotorua, and Kaingaroa districts. The report focused on kāwanatanga and Māori autonomy, land administration and alienation, Treaty development rights, and resources and the environment.

In addition, the ***Te Tau Ihu (Northern South Island)*** Tribunal released two preliminary reports in March and September 2007. These reports provide early findings on customary rights and their treatment by the Crown, in order to assist the claimants and the Crown in their settlement negotiations.

The remaining twelve reports address a wide range of inquiries into urgent and single-issue claims, which have been a growing element of the Tribunal's work in the last three years:

- ***The Interim Report of the Waitangi Tribunal on Te Tai Hauauru By-Election*** (July 2004) investigated claims that there were too few polling places in the Te Tai Hauauru electorate.

- ***The Offender Assessment Policies Report*** (October 2005) examined the policies and procedures used by the Department of Corrections in assessing the potential risk of Māori re-offending and of factors likely to reduce that risk.
- ***The Waimumu Trust (SILNA) Report*** (May 2005) addressed claims that the Crown was stopping the beneficiaries of a Southland Māori trust from exporting timber from their lands, in breach of the Treaty of Waitangi.
- The ***Haane Manahi Victoria Cross Preliminary Report*** (December 2005) responded to a claim about the failure to award to Lance-Sergeant Haane Manahi the Victoria Cross for which he had been recommended.
- ***The Report on the Aotearoa Institute Claim Concerning Te Wānanga o Aotearoa*** (December 2005) dealt with a claim that the Crown had undermined the rangatiratanga of the Aotearoa Institute Te Kuratini o Ngā Waka Trust Board by effectively taking control of Te Wānanga o Aotearoa.
- In the two ***Interim Reports of the Waitangi Tribunal in Respect of the ANZTPA Regime*** (September and October 2006), the Indigneous Flora and Fauna and Māori Intellectual Property Tribunal addressed claims concerning the therapeutic products policy then about to be introduced by legislation.
- ***The Tamaki Makaurau Urgency Report*** (June 2007) examined claims concerning the effects of the Crown's negotiations with Ngāti Whātua on other tangata whenua groups in the Tamaki Makaurau district.
- The four ***Te Arawa Mandate and Settlement Reports*** (2004-2007) deal with claims relating to aspects of the Crown's settlement process in the Central North Island region.

Between them, these reports address a huge range of issues and cover a considerable proportion of the North Island as well as the top of the South Island. It is the Tribunal's hope that they will promote a resolution of the grievances aired and assist claimants and the Crown to complete the successful negotation of a large number of Treaty claims.

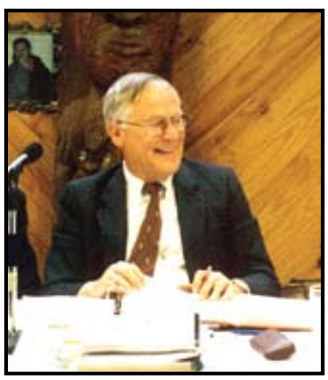
Te Raupatu o Tauranga Moana

Report on the Tauranga Confiscation Claims

The Tribunal released its report on ***Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims*** on 11 August 2004. This report concerns the raupatu (confiscation) of Māori land in the Tauranga district following the war of 1864, and covers 55 separate claims filed on behalf of the various hapu of Ngāi Te Rangi, Ngāti Ranginui, Ngāti Pukenga (or Tarewa), Waitaha, and Marutūahu. This was the fullest inquiry into confiscation that has ever been conducted by the Tribunal. In contrast to the Royal Commission of 1927, which concluded that Tauranga Māori had not been badly treated, the Tribunal found that they have substantial legitimate grievances as a result of confiscation.

Copies of the Tauranga Raupatu Report at the release in 2004.

The Tribunal panel consisted of the late Judge Richard Kearney (presiding officer), Professor Keith Sorrenson, John Clarke, Areta Koopu, and the Honourable Dr Michael Bassett. The late Sir John Turei provided assistance to the Tribunal as a kaumatua advisor. In 2000, the Tribunal directed that the Tauranga Moana inquiry was to proceed in two stages, commencing with confiscation and other district issues up to the year 1886 (when the 'return' of confiscated land was completed). The second stage of the inquiry would hear and report on post-1886 issues.



Professor Keith Sorrenson, historian member on the Tauranga Moana Tribunal panel.

The key events relating to the Tauranga raupatu claims concerned the Crown's military operations in the Tauranga district in 1864. The Crown and Māori fought two battles at Pukehinahina and Te Ranga. Following peace negotiations, 214,000 acres of land were confiscated under the New Zealand Settlements Act 1863. The confiscation abolished Māori customary tenure in the Tauranga district. The Crown retained 42,000 acres for settlement and returned the remainder to Māori in individual titles. The Crown then purchased much of this returned land, including the Te Puna-Katikati purchase (93,188 acres). Much of the Tribunal's report focuses on analysing what happened after the raupatu, including the Te Puna-Katikati purchase.

In terms of the Government's attack on Tauranga Māori in the 1860s, the Tribunal found that the Tauranga tribes had not behaved in a way that made the Crown's military operations against them justifiable. The Crown, in attacking Tauranga Māori in 1864, was in breach of the Treaty by attacking its own citizens, failing to provide good governance, and undermining their tino rangatiratanga. The Crown compounded this Treaty breach by then confiscating their land, in clear and further violation of the Treaty and without any real justification. It followed the confiscation with the large-scale Te Puna-Katikati 'purchase', which was initiated with a small minority of loyalist Ngāi Te Rangi chiefs and then imposed on the rest with ongoing threats to use military force. The Tribunal found that the Crown breached the Treaty by attacking Tauranga Māori, confiscating their land, and then obtaining much of the district through the deeply flawed Te Puna-Katikati 'purchase'.

The Crown kept just under a quarter of the original confiscated lands. It located its blocks arbitrarily and without the consent of those Māori affected. The hapu of Ngāti Ranginui, in particular, were affected by the unfair way in which land was returned. The form of title used for the return was individualised European tenure. Māori customary title was thus abolished without the consent of owners.

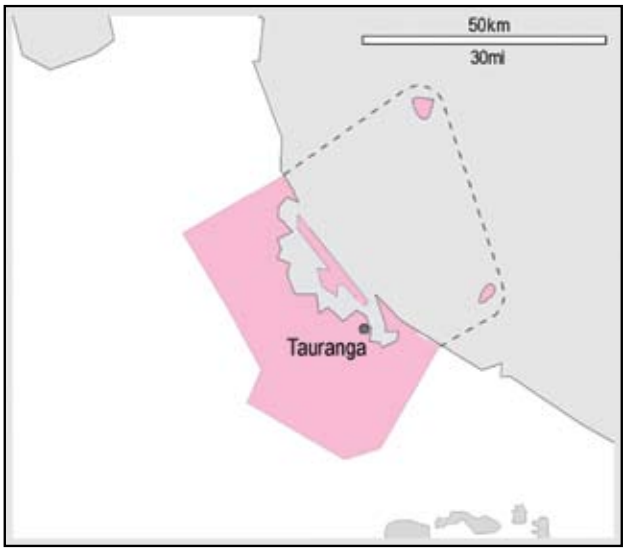
The Tauranga Raupatu Tribunal panel. L-R, Sir John Turei (kaumatua adviser), the Honourable Dr Michael Bassett, Judge Richard Kearney, and John Clarke. Members not pictured: Professor Keith Sorrenson, Areta Koopu.

A minority of owners started sales outside of normal community sanctions because of the new title system. The sales were often without the consent of the leading chiefs and local hapu, and led to widespread protest.

The Crown failed to ensure that all those with rights in land had consented to sales, and failed to ensure that Tauranga Māori retained sufficient land for their needs. Similarly, the Crown allowed a system of private land transactions which also deprived Māori of their land in an unfair manner. Lastly, the Crown's attempt to address Tauranga raupatu claims in the twentieth century failed to adequately redress legitimate grievances and, at key points in the process, breached the Treaty.

Tauranga Māori suffered considerable prejudice as a result of breaches of the the Treaty arising from the Crown's confiscation, return and purchase of Māori land in the Tauranga district before 1886. The Tribunal recommended that the Crown move to settle the Tauranga claims with generous redress.

The Honourable Dr Bassett dissented from the majority Tribunal report on certain issues. His dissent related to the majority opinion that the Crown was not justified in taking military action against Tauranga Māori in the 1860s; that the Crown breached the Treaty by individualising the tenure of Māori land at Tauranga; and that the Crown failed to adequately supervise the alienation of returned Māori land. However, despite his dissenting views on these points, Dr Bassett concluded that the other Treaty breaches suffered by Tauranga Māori were serious enough to warrant generous redress from the Crown. 'My conclusions do not warrant any lessening of the quantum of settlement made with Tauranga Māori', he said.



Map of the Tauranga Moana inquiry district.

Tūranga Tangata Tūranga Whenua

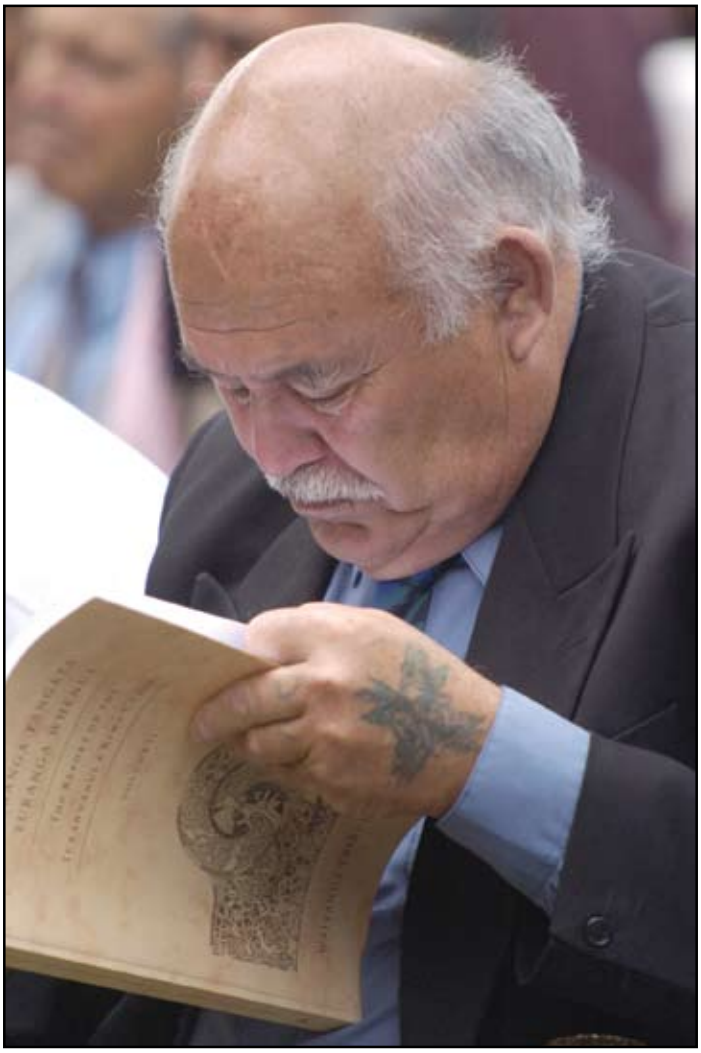
Report on the Turanganui a Kiwa Claims

The release of the ***Tūranga Tangata Tūranga Whenua*** (Gisborne) report, on 8 October 2004, heralded a new era for the Waitangi Tribunal. Four years on from the first judicial conference, the release signalled the culmination of a faster and more efficient Tribunal process. The four-member Tribunal, consisting of Chief Judge Joe Williams (presiding officer), Dame Margaret Bazley, Professor Wharehuia Milroy, and Dr Ann Parsonson, heard evidence from claimants and technical experts over a period of nine months. That evidence was structured around agreed key issues. The Tribunal members then considered the evidence and reported their findings in just over two years. The substantial two-volume report is the result of an unprecedented degree of cooperation both among the various claimant groups and between the claimants and the Crown.

The Tribunal made a number of key findings. Overall, the Tribunal found that the Crown, as the embodiment of executive government in New Zealand, is subject to the law and cannot act outside it. Despite this, in dealing with Tūranga Māori in the nineteenth century, the Crown repeatedly disregarded its own law when it was politically expedient to do so.

Tūranga (the original name for Gisborne) was a practically autonomous area until 1865, when the Crown laid siege to the Waerenga a Hika pā. The Tribunal acknowledged that the Crown could legally turn its guns on its own citizens if they were in rebellion, though it found that this was not the case in Tūranga, as Waerenga a Hika was a defensive, not offensive, pā. Seventy-one defenders were killed, and 113 men were transported to Wharekauri (the Chatham Islands) as a result of the attack on the pā. Given that these prisoners neither faced any charges, nor were convicted of any offence, the Tribunal found that their imprisonment was unlawful and in breach of the Treaty of Waitangi.

The Tribunal's finding on the prophet and leader Te Kooti attracted considerable media attention when the report was released. Te Kooti escaped from Wharekauri in 1868 with 300 of his followers (known as the 'whakarau' or 'dispossessed'), landing at the south Poverty Bay settlement of Whareongaonga. Shortly afterwards they attacked the Tūranga settlements of Patutahi, Matawhero, and Ōweta. Between 50 and 70 settlers and Māori were killed. The Tribunal found that there was no justification for the actions of Te Kooti in this instance: 'The Whakarau were entitled to defend themselves against Crown actions which were illegal and in breach of Treaty principle (they were entitled to escape from Wharekauri) but they breached their own responsibilities as citizens and Treaty partners in attacking and killing or forcibly detaining unarmed civilian targets.' Moreover, it found, the Crown was justified in its attempt to pursue and punish those who committed these crimes.



Gisborne Herald

Dave Hawea of Whānau a Kai at the release of the Tūranga Tangata Tūranga Whenua Report in 2004.

After their action at Matawhero, Patutahi, and Ōweta, Te Kooti and the whakarau retreated to Ngātapa Pā, where they were besieged by colonial and kāwanatanga forces. The Tribunal found that the Crown breached the Treaty in its actions following the siege of Ngātapa Pā. In particular, the execution of between 86 and 128 unarmed prisoners constituted a serious breach and the Tribunal found that the scale of the systematic killing at Ngātapa represents one of the worst abuses of law and human rights in New Zealand's colonial history.

The ceding of 1.195 million acres in 1868, the establishment of the

Poverty Bay Commission in 1869, and the introduction of the Native Land Court were all indications that Tūranga's autonomy had been broken in the years following the Ngātapa conflict. The Tribunal found that the cession was made not voluntarily but under duress: the Crown threatened to remove its protection unless Tūranga Māori, who were still fearful of attack from Te Kooti or Ngāti Porou, ceded the entire district. Such a threat was in breach of the Treaty of Waitangi. Additionally, the deed of cession was not signed by all Tūranga Māori. The Tribunal found that the deed could not extinguish the rights of those who did not sign. There was also confusion as to exactly how much land was to be ceded to the Crown. This was not helped by the muddled record keeping of Crown officials, who retrospectively altered both the sketch map and the record of the Poverty Bay Commission in order to give the appearance of mutuality between the parties, when none existed.

The Poverty Bay Commission was established to punish 'rebels' by confiscating their lands, and to return land to 'loyal' Māori in the form of Crown-derived titles. The Tribunal found that the Crown could not, by proclamation, create a new court with punitive powers that would allow it to take the constitutional role of existing civil and military courts. Nor did the commission have the power to confiscate land. It was therefore unlawful for the commission to act as the Crown's instrument of punishment in Tūranga. Finally, the Tribunal found that the commission did not comply with standards of the time for fair legal process.

The ***Tūranga Tangata Tūranga Whenua*** report provides a detailed examination of the Native Land Court system, and the way in which it operated in Tūranga. The Tribunal found that Tūranga Māori did want Crown-ratified titles so they could get access to finance and take part in the settler economy. However, they wanted to keep control of the process and make their own title decisions, and vigorously opposed the Court process because it took that right from them. When Māori took land into the Land Court system, the owners were listed as having individual shares in the land. These shares were not surveyed or defined, meaning that individual owners could not obtain mortgages for development using land as security. It did, however, mean that individuals could sell their interests without the collective consent of the owners, which seriously undermined the ability of Māori communities to manage their lands collectively. Because Māori land titles were not freehold, prices paid were low. The costs associated with the Court process diminished the profits even further. As a result, Tūranga Māori sold more land as individuals than they would have in a community decision-making process. The sale of their land rarely enabled them to exchange their land for sufficient money to engage in the colonial economy.

Map of the Tūranga (Gisborne) inquiry district.

Tūranga Māori did seek to circumvent the Native Land Court system. The leader and MP Wi Pere tried, through the creation of two trusts and a company, to set up systems that would enable Māori to manage their lands collectively: to sell where appropriate and develop the remainder. Despite considerable interest, the trust venture was not successful. The Tribunal found that the Crown's failure to provide adequate systems for community title and land management, and to prevent the piecemeal erosion of community land interests, breached the guarantee of tino rangatiratanga in article two of the Treaty, as well as the Crown's obligation of active protection.

Following its findings on the Tūranga claims, the Tribunal offered some views about whom the Crown should negotiate with for the settlement of the Tūranga claims, the comparative size of the claims that were well founded, and the relativities between the claimant groups in Tūranga. The Tribunal observed that the settlement for Tūranga should be substantial and that it should reflect the enormous loss that the iwi and hapu of Tūranga have suffered in people and land since 1865.


Chief Judge Joe Williams, presiding officer of the Tūranga (Gisborne) Tribunal panel.

Kaipara Report

The Tribunal released its ***Kaipara Report*** on 14 January 2006. The Tribunal panel hearing the claims consisted of Dame Augusta Wallace (presiding officer), the late Sir John Turei, the late Dame Evelyn Stokes, Brian Corban, Areta Koopu, and the Honourable Dr Michael Bassett. The district report covers some 30 claims in an area north of Auckland stretching from Dargaville down to Muriwai and, on the eastern side, from Mangawhai down to Riverhead on the Waitemata Harbour. Special geographic features of the inquiry district include its extensive coastline and the sand-dune environment down its western coast. Crown policies and practices relating to the land and resources in those areas and environments were the subject of investigation by the Tribunal.

Being an area that saw European settlement before 1840, one particular issue that featured in this inquiry was the Crown's process to deal with pre-Treaty private land transactions. Other issues included the Crown's purchase of Kaipara land from Māori, its Native Land legislation that individualised title and established the Native Land Court to turn customary tribal titles into Crown-derived individual ones, and questions around the sufficiency of land left to Māori.

The Crown has already acknowledged, in its settlement of northern Kaipara claims with Te Uri o Hau, that it committed a number of Treaty breaches relating to early land transactions in the Kaipara area, its pre-1865 purchases of land, and its Native Land legislation and administration. The Tribunal was of the view that Kaipara claimants other than Te Uri o Hau were equally affected by such breaches.

For instance, the Tribunal found that the Crown had failed to ensure a full and proper investigation of a number of private pre-Treaty transactions in the Kaipara district and found, in addition, that the hapu and iwi affected were likely to have suffered further prejudice from Crown involvement in related transactions. As an example of the latter, it was found that in some cases the Crown had limited the area confirmed to settlers and had acquired the 'surplus' for itself, instead of returning that land to the original Māori owners or their descendants.

With regard to claims about the nineteenth-century alienation of land around the Mangawhai Harbour, the Tribunal found that, on the whole, Treaty breach by the Crown had been minimal. However, there was a provision in the Crown's Mangawhai purchase deed of 1854 for 10 percent of the proceeds of any on-sale of the land to be 'expended for the benefit of the Natives'. The Tribunal found that the Crown did not keep adequate records beyond 1874, and failed to act in good faith when it did not ensure that the provision continued to be implemented.

Dame Augusta Wallace, presiding officer of the Kaipara inquiry.

In southern Kaipara, the Tribunal found that pre-1865 Crown purchases were not excessive. Where it did criticise the Crown,

The Kaipara Tribunal panel. L-R, Areta Koopu, Brian Corban, Dame Augusta Wallace, Dame Evelyn Stokes, and the Honourable Dr Michael Bassett.

though, was in not ensuring the protection of land set aside as Māori reserves. It found, for example, that Ngāti Whātua had been prejudiced by the Crown's failure to make those reserves inalienable. The Tribunal further noted that during the late nineteenth century the Native Land Court determined title to almost 130,000 acres of Māori land in southern Kaipara. Of that, almost 115,000 acres had passed out of Māori hands by 1900. The Tribunal found that 'by imposing the legislative regime which governed Māori land tenure and the Native Land Court, the Crown failed in its fiduciary duty … to protect Māori interests and to ensure that a sufficient land base was reserved for the present and future needs of Kaipara Māori communities'. This Treaty breach resulted in significant harm for Kaipara Māori.

The Tribunal also investigated claims relating to the Woodhill Forest, planted on sand-dunes down the western Kaipara coast. The Crown acquired much of the 36,000 acre area from Māori during the 1920s and '30s, initially focusing on sand-dune stabilisation and reclamation but later shifting its attention to commercial forestry. While the Tribunal acknowledged a degree of benefit to Māori from these activities, it found that claimants were prejudiced by the loss of certain urupa and by the loss of access to the coast for kaimoana. Further it found that the Crown failed to consult adequately with Māori during its forestry restructuring of the 1980s and to assess the socio-economic impacts of its policies. It found that the case of the Otakanini claimants was slightly different, however, in that they leased, rather than sold, their land to the Crown. TheTribunal was not persuaded that they had been prejudiced by either Crown action or inaction concerning the forest.

This report also contains a minority opinion from one of the panel's members, the Honourable Dr Michael Bassett. Dr Bassett states that generally the Tribunal's report 'does not grapple adequately with the overall historical background to these claims. While the Crown failed Māori in several respects, many Māori failed their own descendants with actions they took during the nineteenth century'. Notwithstanding these reservations, Dr Bassett agrees with the Tribunal's recommendations for a comprehensive southern Kaipara Treaty settlement. He favours 'a settlement on a pro-rata basis that would not disadvantage Māori in southern Kaipara in comparison with Te Uri o Hau'.

Map of the Kaipara inquiry district.

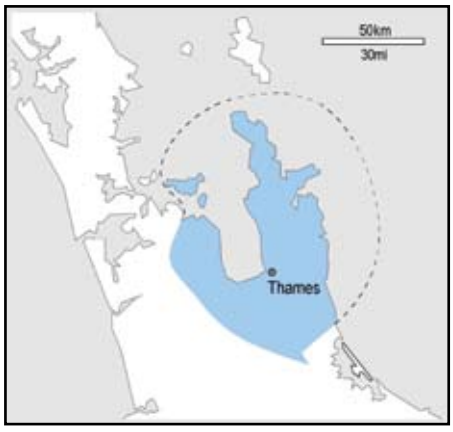
Hauraki Report

On 24 June 2006, the Tribunal presented ***The Hauraki Report*** to claimants assembled at Ngahutoitoi marae near Paeroa. This ceremony was the culmination of some eight years' work, and fittingly, was held at the very location where hearings began in September 1998. The report was a substantial one, comprising three volumes, and covering 56 claims within the Hauraki Inquiry District. The first claims were lodged by the Hauraki Māori Trust Board, which represents twelve iwi in the district's complex tribal structure. Subsequently, many of the constituent iwi and hapu lodged separate claims. Hearing the claims were Dame Augusta Wallace (presiding officer), John Kneebone, Professor Wharehuia Milroy and Dame Evelyn Stokes. To the Tribunal's great regret and sorrow, Dame Evelyn died in August 2005, before the report could be completed.

Gold mining issues were a central feature of the Hauraki claims, and this was the first time these issues had been considered in depth by the Tribunal. Claimants argued that because they owned the land, and everything in the land, they also controlled access to gold. The key questions for the Tribunal to resolve were whether the Crown should wait upon the owners' consent to open the land for mining, and whether the payments to owners for the right of access were fair.

The Tribunal found that, in the 1860s, the Crown did generally negotiate openly and fairly, and that the payments to owners of miners' rights fees and lease rentals were reasonable. However, the Tribunal found that undue pressure was brought to bear in some cases and that the Crown unilaterally reduced the scale of fees in the 1880s, when the mining industry was in difficulties.

Even more seriously, the Crown



Map of the Hauraki inquiry district.

systematically pursued the purchase of the freehold of land already subject to mining cessions. In 1940, a commission of inquiry found that Māori owners had not been fully advised that sale of the freehold meant they were no longer entitled to the mining revenue, and that the Crown, as holder of the mining leases, had at least a moral obligation to advise them.

The commission recommended that the Crown make a substantial ex gratia payment to account for the loss of revenue to Māori. However, this was never implemented and the Crown conceded in the Tribunal's proceedings that this payment should have been made. The Tribunal has welcomed the Crown's concession and recommended that the 1940 recommendation be implemented 'fully and in a generous spirit'.

Raupatu – the confiscation of land by the Crown during the wars of the 1860s – was another major issue in Hauraki. The Tribunal found that responsibility for the renewal of war in 1863 in the Waikato and Hauraki lay largely with Governor Grey and his ministers, and that confiscation of land was unwarranted and in breach of the Treaty. Moreover, the Crown conceded in hearing that little land was subsequently returned to the Hauraki tribes. The Tribunal has welcomed this concession, because of the seriousness of the injuries to Hauraki iwi by war and raupatu.

In relation to the intersecting claims of Tainui and Hauraki over the Maramarua forest, the Tribunal concluded that the Crown has met its obligations concerning the forest under the Waikato Raupatu Claims Settlement Act 1995. The Tribunal considered that the Maramarua Crown Forest lands, and other Crown lands in Hauraki, are potentially open to negotiations between Hauraki and the Office of Treaty Settlements.

The Crown's systematic purchase of Hauraki lands was the third major aspect of the Hauraki claims. Despite early purchases and confiscation, Hauraki iwi still possessed some 80 percent of their traditional lands in 1865. By 1900, they possessed no more than 20 percent, and at the time of hearing, only about 2.6 percent. This dispossession was carried out under the mechanisms of the Native Land Acts and Crown pre-emption (monopoly purchasing).

The Tribunal's report shows that the Native Lands Act 1862 was applied in Hauraki without the two-stage process of first granting a tribal title then allowing the community to make considered decisions about multiple uses of the land. Moreover, subsequent legislation, notably the 1865 and 1873 Acts, were, in the Tribunal's finding, little more than convenient mechanisms to individualise title, divide the owners, and facilitate purchase. Māori aspirations to develop their land were persistently frustrated by these Native Land Acts. Even after the Stout-Ngata Commission in 1907-08 reported that Hauraki tribes could not afford to sell any more land, the Crown passed the Native Land Act 1909, which included further mechanisms to facilitate purchase. The Tribunal has concluded that systematic purchase under the Native Land Acts exceeded even war and raupatu in its far-reaching and damaging consequences for Hauraki Māori.

Dame Evelyn Stokes (1936-2005).

The Tribunal hopes this far-ranging and comprehensive report will assist in facilitating settlement between Hauraki Māori and the Crown. Moreover, for the general as well as the academic reader, it will modify existing historical understandings of many of the most important issues in post-1840 New Zealand.

The Hauraki Tribunal panel. L-R, John Kneebone, Wharehuia Milroy, Dame Augusta Wallace and Dame Evelyn Stokes.

He Maunga Rongo

Report on Central North Island Claims

He Maunga Rongo: Report on Central North Island Claims was released in pre-publication instalments on 22 June, 31 July, 2 August, and 20 November 2007. The Report addresses some 120 claims from a huge inquiry region, stretching from the Bay of Plenty coastline down to south of Lake Taupō, and eastwards across to the Kaingaroa Forest and the Rangitaiki River. The Central North Island (CNI) inquiry is the first undertaken under the modular variant of the 'New Approach', which inquires into 'generic' or 'big picture' issues that affect a large number of the claimants, leaving more specific claim issues to be addressed in a potential 'Stage Two' inquiry, if one is desired by the claimants and the Crown.

The Tribunal panel, consisting of Judge Caren Fox (formerly Wickliffe, presiding officer), Dr Ann Parsonson, Gloria Herbert, and John Baird, heard evidence over ten weeks between 1 February and 9 November 2005. Some 300 witnesses provided evidential briefs – including over 270 from Māori themselves – and the Tribunal considered, in addition, over 100 written research reports. The resulting report is the largest the Tribunal has so far produced. It focuses on the following issues:

- kāwanatanga (governance) and Māori autonomy (tino rangatiratanga)
- land administration and alienation
- Treaty development rights
- resources and the environment

Gray Clapham/Mana Magazine

Judge Caren Fox, presiding officer of the Central North Island inquiry.

The Tribunal considered the political relationship between CNI Māori and the Crown from 1840 to around 1920. It found that the Treaty guaranteed and protected the full authority (tino rangatiratanga) of Māori over their lands, people, treasures and affairs, and that such authority was inherent to Māori tribes and not created by the Treaty. The Tribunal also found that indigenous 'sovereignty' was not about independence from the State but rather about the proper exercise of Crown and Māori autonomy in their respective spheres and about managing the overlaps in partnership.

The Tribunal concluded that the Treaty's guarantee to Māori of the same rights as other British subjects included the right to self-government through representative institutions. The report considers a number of ways in which the Crown could have met its obligations in this respect, but failed to do so. The Tribunal concluded that given the large number and variety of lost opportunities to provide for Māori self-government between 1840 and 1920, the historical evidence was overwhelmingly that the Crown committed a sustained breach of the Treaty in this regard. That Treaty breach had far-reaching effects in terms of the capacity for CNI Māori to manage their lands and affairs, engage with the new economy, and to use and retain the enormous natural resources of the region.

The Tribunal also considered the administration and alienation of Māori land in the region, and the lasting difficulties resulting from the Native land title system introduced by the Crown in the nineteenth century. The report notes that with the transformation of customary rights into individualised shares in land, many owners came to hold interests scattered over large

areas. As the Māori land-base shrank and the population grew, the Land Court's succession rules meant that inherited shares became smaller and smaller. The Tribunal also found that the provisions for the purchasing and leasing of Māori land prevented Māori from making decisions at a community level regarding land management, development, sale and lease. The Tribunal considered this to be a key breach of the Treaty. The Tribunal did find, however, that the breach has now been mitigated by the provisions of Te Ture Whenua Māori Act 1993, which has given Māori landowners a greater range of options.

Regarding public works, the Tribunal concluded on the basis of the evidence heard in the inquiry that Māori land was often not taken as a last resort. Rather, because of the lesser requirements for notification, consultation, and opportunities to object, Māori land tended to be taken as a first or early resort. This was in breach of the Treaty which guaranteed to Māori the undisturbed possession of their lands for as long as they wished to retain them, and the same rights as their fellow citizens.

The Tribunal also found that Māori possessed a Treaty right to development. This right extended to the development of their land and other property, including through the use of new technologies, and to having equal opportunities to the general population in this respect. In particular, Māori should have had equal access to state assistance, which the Crown's historian showed they did not. The Treaty right also included the ability to develop, or profit from, resources in which they have a proprietary interest under Māori custom, even where the nature of that property right was not necessarily recognised under English law.

The Tribunal considered economic development in relation to farming, tourism, forestry (both indigenous and exotic), and power generation. The Tribunal found that the Crown had failed in its duty of active protection of legitimate Māori interests in many of these areas. As a result, it concluded, CNI Māori were often marginalised from economic development, especially up until the mid twentieth century. The Tribunal considered that the Crown was more successful in upholding its Treaty obligations in the exotic forestry sector but that CNI Māori economic development in that sector had come at a high price in terms of their cultural, environmental and social interests.

The Tribunal reviewed the Crown's policies for natural resources and the environment, and their relevance to the claims from the CNI region. The report examines the ways in which CNI Māori have conceptualised, claimed and utilised the resources of the region, and concludes that two world views and two systems of law and authority have clashed. The Tribunal found that Māori customary rights to indigenous freshwater and sea fisheries remained legally enforceable so long as there was compliance with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. It also found that in legal and Treaty terms, CNI Māori had largely retained their customary rights to the geothermal fields of the Central North Island and to the underlying Taupō Volcanic Zone. The Tribunal found that the Crown had breached the Treaty in failing to recognise and provide for the customary rights and Treaty interests of CNI Māori in the natural resources of the region. In the area of resource management, the Tribunal is of the opinion that CNI Māori seek the right to negotiate arrangements, in accordance with the principle of partnership and the Treaty of Waitangi, and that the RMA should be amended to better protect their Treaty interests.

The Tribunal released ***He Maunga Rongo*** in pre-publication instalments in order that the Crown and claimants might have access to their analysis and findings before the introduction of the Te Arawa Settlement Bill into Parliament. The Tribunal has no jurisdiction to comment on issues which are before the House, and the Te Arawa Settlement Bill is likely to address a number of matters which were also the subject of the Tribunal's CNI inquiry. The Tribunal will formally publish the report as soon as possible.

Map of the Central North Island inquiry region.


The Central North Island Tribunal panel. L-R, John Baird, Judge Caren Fox, Gloria Herbert and Dr Ann Parsonson.

Te Tau Ihu Preliminary Reports on Customary Rights

The Tribunal has released two preliminary reports on issues in the Te Tau Ihu (Northern South Island) district inquiry during 2007. The reports deal with claims filed by the eight tribes of Te Tau Ihu: Ngāti Toa Rangatira, Te Atiawa, Ngāti Koata, Ngāti Tama, Ngāti Rārua, Rangitane, Ngāti Apa, and Ngāti Kuia. At the request of parties, the Tribunal prepared these reports to assist claimants and the Crown with their negotiations by providing early findings on customary rights and their treatment by the Crown. The Tribunal's final Te Tau Ihu report will address the remaining issues in the Northern South Island inquiry. The Tribunal panel comprises Deputy Chief Judge Wilson Isaac (presiding officer), Rangitihi Tahuparae, John Clarke, Professor Keith Sorrenson, and Pam Ringwood.

The first report, ***Te Tau Ihu o Te Waka a Maui: Preliminary Report on Te Tau Ihu Customary Rights in the Northern South Island***, was released on 19 March 2007. In this report, the Tribunal found that Crown agents failed to satisfactorily determine the correct owners of land in the top of the South Island, or the nature of their customary rights, before commencing purchase negotiations and confirming those undertaken by the New Zealand Company. The Tribunal further found that this omission was not mitigated by the Crown identifying and paying other right-holders at the end of the final (Waipounamu) purchase, as argued by Crown counsel during the hearings. It was not possible for Māori to enter into fair, free, and informed transactions when the Crown had either already granted their land to settlers or claimed that it had already bought it from others. One tribe, Ngāti Apa, was never consulted or paid at all. The Crown's purchase of land in the Te Tau Ihu district was fundamentally flawed and unfair, resulting in Treaty breaches and significant prejudice for those who lost almost all their land rapidly as a result. The Crown conceded some Treaty breaches and unfair actions. Additional issues relating to these purchases, as well as a full analysis of the prejudice suffered by Te Tau Ihu tribes, will be included in the final report.

Map of the Te Tau Ihu (Northern South Island) inquiry district.

The second report, ***Te Tau Ihu o Te Waka a Maui: Preliminary Report on Te Tau Ihu Customary Rights in the Statutory Ngāi Tahu Takiwa***, was released on 3 September 2007. This report concerns the customary rights of Te Tau Ihu iwi in the area defined by Te Rūnanga o Ngāi Tahu Act 1996 as the Ngāi Tahu takiwā. The Tribunal found that the six Te Tau Ihu iwi that advanced claims with respect to the takiwā had valid customary rights in that area, overlapping the acknowledged rights of Ngāi Tahu. The Tribunal found that the rights of all these iwi were protected and guaranteed by the Treaty. Notwithstanding this, the Crown extinguished the vast majority of these interests in a series of purchases between 1847 and 1860 without determining the correct right-holders or obtaining their full and free consent.

The Tribunal further considered that these historical breaches against Te Tau Ihu iwi continued into the twentieth century when the Crown chose to deal exclusively with Ngāi Tahu in the statutorily-defined Ngāi Tahu takiwā, at the expense of other iwi who also had legitimate rights in the northern part of the area. On the basis of a Māori Appellate Court finding in 1990 that Ngāi Tahu had sole rights of ownership in the Kaikoura and Arahura blocks at the end of sales to the Crown, the Government has since dealt exclusively with Ngāi Tahu. The boundaries of the takiwā were statutorily defined in Te Rūnanga o Ngāi Tahu Act 1996 and the Ngāi Tahu Claims Settlement Act 1998. The Tribunal pointed out that there is nothing in this legislation that prevents the Government from considering Te Tau Ihu iwi interests within the takiwā. The legislation is not in itself in breach of the Treaty; rather the breach lies in the way in which the Government has interpreted it. Te Tau Ihu iwi interests were ignored during the negotiation and settlement of the Ngāi Tahu claim. The Tribunal concluded that the Crown had failed to consult adequately with Te Tau Ihu iwi during this process. Assets that could potentially have been included in future settlement with Te Tau Ihu iwi were vested in the sole ownership of Ngāi Tahu. This exclusive treatment had continued since the settlement, to the detriment of Te Tau Ihu iwi.

Deputy Chief Judge Wilson Isaac, presiding officer of the Te Tau Ihu (Northern South Island) inquiry.

Interim Report on
Te Tai Hauauru By-Election

The ***Interim Report of the Waitangi Tribunal on Te Tai Hauauru By-Election*** was released on 8 July 2004. The claim was lodged by Whatarangi Winiata, both as an individual and in his capacity as interim president of the Māori Party. It was filed on behalf of registered Māori voters in the electorate of Te Tai Hauauru. The claim concerned the polling arrangements made by the chief electoral officer in preparation for the by-election taking place in Te Tai Hauauru electorate on 10 July 2004. Given that the by-election was about to happen, the Tribunal agreed to hear the claimants and Crown on an urgent basis. The hearing took place on 7 and 8 July. The Tribunal panel consisted of Chief Judge Joe Williams (presiding officer), John Clarke, and Dame Margaret Bazley.

The essence of the claim was that the 100 polling places provided for the 2004 by-election were too few, particularly when compared with the 406 provided in the 2002 election. The Tribunal did not make any formal recommendation, but, in light of the distressingly low voter turnout in Te Tai Hauauru in 2002, and of the concerns expressed about distances from polling places, it suggested that the chief electoral officer might wish to reconsider his stance with respect to 19 polling places to which it made particular reference.

Te Tai Hauauru Electorate.

Offender Assessment Policies Report

On Monday 10 October 2005, the Waitangi Tribunal released ***The Offender Assessment Policies Report***, which considered certain policies and procedures used by the Department of Corrections in relation to the assessment of offenders. The report considered two specific assessment tools (tests) that were designed and used by the department. The tools helped to identify and assess offenders who were at high risk of reoffending, and were intended to assist the development of programmes that could work towards reducing Māori reoffending.

Claimant Tom Hemopo, on behalf of Ngāti Kahungunu, claimed that the assessment tools disadvantaged Māori offenders in terms of the type and length of sentences they received. He also alleged deficiencies in the department's consultation with Māori, and in the design, implementation, and use of the tools.

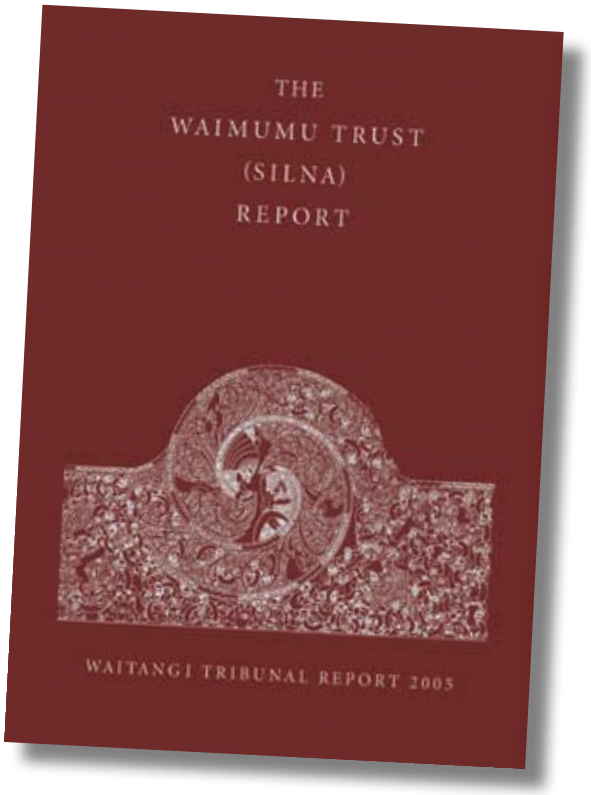
The Tribunal concluded that there was insufficient evidence to establish that any prejudice had been or was being caused to Māori offenders. The Tribunal recognised that the department had acted in good faith in order to reduce reoffending and believed that some aspects of the assessment tools were ground-breaking.

Nevertheless, it believed that the 'MaCRNs' (Māori Culture-Related Needs) tool, which focused on Māori offenders' cultural responsiveness, required more testing and independent evaluation. The Tribunal also identified Treaty breaches in the way that the department had developed that tool without consulting Māori communities, and in its monitoring of the tool's use and effects. It considered that Māori communities, including Ngāti Kahungunu, had significant interests in the goal of reducing Māori offending and in using Māori culture to help achieve that goal, and the Tribunal thought that the department's responses to Māori reoffending should be developed and monitored in a manner that was consistent with those interests.

In its summing up, the Tribunal said that it believed the parties might not be far apart in finding a way forward that built on the important work that had already been done.

Waimumu Trust (SILNA) Report

The Waitangi Tribunal released ***The Waimumu Trust (SILNA) Report*** on 9 May 2005. The claimants are the beneficiaries of the Waimumu Trust, which administers an area of 4440 hectares of indigenous forested land in central Southland, granted to their ancestors under the South Island Landless Natives Act 1906 (SILNA). The claim is about the Forest Amendment Act 2004, which removed their right to export unsustainably logged timber without compensation. This Act arose from the Crown's indigenous forests and SILNA policies, which the claimants alleged are in breach of the principles of the Treaty of Waitangi. They argued that the removal of the power to export (without compensation) would lead to a loss of some $25 million in potential earnings. The claim was heard urgently at Christchurch in October 2004, with closing submissions in Wellington in November of that year. The Tribunal panel consisted of Judge Layne Harvey (presiding officer), Dr Angela Ballara, and Professor Hirini Moko Mead.



The main focus of the urgent inquiry was, in the first instance, the claim that the Forests Amendment Act 2004 had removed the power of the claimants to export unsustainably logged timber, without compensation. However, the valuations provided by both Crown and claimants were less than satisfactory, and in any case it was not evident that there is an export market for the Waimumu Trust's timber. The Tribunal was therefore unable to uphold the claim that the opportunity cost (or prejudice) of the Act had been a loss in value in the amount of just over $23.5 million, and did not consider this part of the claim to be well founded. In the Tribunal's view it was the Resource Management Act 1991, rather than the Forests Amendment Act, which was the source of the key constraint on the claimants' ability to make an economic use of their SILNA lands. However, it noted that the claimants had 'not tested the parameters of this constraint by seeking resource consents' so it was unable to make a full finding on the matter.

Location of SILNA forests mentioned.

In terms of claim issues as they related specifically to the beneficiaries of the Waimumu Trust, the Tribunal found that the Crown's actions in the 1990s, in making privately negotiated settlements with other SILNA groups, created a legitimate expectation that they would receive compensation as a result of a negotiated settlement. This expectation was created by the Framework Agreement for negotiations, and then strengthened by moratorium payments and the privately negotiated settlements of the Waitutu and Rakiura SILNA forest claims. The latter were settled because they have a high conservation value, and the settlements were calculated on the basis of commercial timber values. The Tribunal found that the Crown abandoned negotiations for compensation without the concurrence of the Waimumu Trust. Instead, it imposed conservation orders under the Nature Heritage Fund (NHF) as the only effective alternative remedy. Unlike the terms agreed in the Waitutu and Rakiura settlements, the NHF payments are calculated on a much lower value than the commercial value of the timber. The Tribunal concluded that the Crown's change of policy has been unfair to the Waimumu Trust and has breached the principles of the Treaty of Waitangi. However, despite this Treaty breach, the Tribunal considers that the claimants have not yet suffered any prejudice. The option of applying to the NHF is still open to them. The Tribunal suggests that the Crown take advantage of this opportunity to review the basis of the NHF payments and ensure a fair outcome for the Waimumu Trust.

Haane Manahi Victoria Cross Claim Preliminary Report

On 19 December 2005 the Tribunal released a preliminary report on the Haane Manahi Victoria Cross claim, as part of its Central North Island inquiry. The claim, filed on behalf of Te Arawa in 2000, concerns the recommendation of an award for a Victoria Cross to Lance-Sergeant Haane Manahi for his bravery and leadership at the Battle of Takrouna in 1943. The recommendation was changed, for reasons unknown, and a Distinguished Conduct Medal (DCM) was awarded instead.

The Tribunal panel consisted of Judge Caren Fox (presiding officer), Dr Ann Parsonson, John Baird, and Gloria Herbert. It heard the claim at Te Papaiouru Marae, Ohinemutu, in May 2005, as part of its hearing of the Central North Island claims. The Tribunal acknowledged that a sense of grievance was shared by the whole of Te Arawa, and also by the wider community (both Pākehā and Māori) as represented by the Returned Services Association. The report noted that the claimants could take heart from the Crown's public acknowledgement, during the inquiry, of Haane Manahi's bravery.

The Tribunal did not make formal findings or recommendations on this claim in its preliminary report, but instead suggested a path forward to resolve the matter. The Tribunal suggested that the Crown and the Manahi VC Committee work together on a joint submission to provide the basis for a formal approach to Buckingham Palace, following an informal approach if convention required it. The Tribunal also suggested that the Crown facilitate a joint research effort with the Manahi VC Committee, to assist with the preparation of the submission. A joint publication of research efforts in a memorial booklet might also assist with the recognition that both Te Arawa and the Crown agree is due to Lance-Sergeant Manahi.

Following the publication of the report, a joint approach was indeed made to the Palace. In the event, the Queen determined that it would not be right to alter the award of the DCM after such a long period of time, and especially in light of her father's decision, in 1949, that no further awards for World War II be considered. Nevertheless, she expressed her great admiration for the bravery of Lance-Sergeant Manahi and indicated her desire to extend a personal token to Te Arawa.

On 16 February 2007, the Crown and claimants filed a joint memorandum stating that they had 'agreed on ways of recognising Mr Manahi's gallantry, and have agreed that the Wai 893 claim is resolved as a result of these negotiations'.

Four weeks later, on 17 March, His Royal Highness Prince Andrew, Duke of York, attended in person at Te Papaiouru marae, Rotorua, to make three symbolic presentations to Te Arawa. In line with the famous refrain 'for God, for King, and for country' from the marching song of the 28th (Māori) Battalion, he presented an altar cloth for Saint Faith's church in Ohinemutu, a letter from the Queen acknowledging Haane Manahi's remarkable bravery, and a ceremonial sword – these gifts to be a tangible link between Haane Manahi, the Queen, Te Arawa and all serving members of the New Zealand Defence Force.

New Zealand Defence Force

Chief of the New Zealand Defence Force, Lieutenant General Jerry Mateparae, presents Geoffrey Manahi with the "Te Arawa Sword of Gallantry for Haane Manahi", on behalf of HRH Prince Andrew, Duke of York (second from right).

Report on the Aotearoa Institute Claim Concerning Te Wānanga o Aotearoa

The Report on the Aotearoa Institute Claim Concerning Te Wānanga o Aotearoa was released on 23 December 2005. The claim was filed by Harold Maniapoto and Tui Adams on behalf of the Aotearoa Institute Te Kuratini o Ngā Waka Trust Board, parent body of Te Wānanga o Aotearoa (TWOA). The claimants alleged that the Crown had breached its Treaty of Waitangi obligations to the wānanga by undermining its rangatiratanga and effectively taking control of the institution. The claim arose after allegations were made in Parliament and elsewhere, early in 2005, about poor quality assurance in the education provided by TWOA, along with deficiencies in its governance and financial management.

The allegations of financial mismanagement were the subject of a report by the Office of the Auditor-General, released on 6 December, and the Waitangi Tribunal's report does not deal with these. Instead the Tribunal panel, consisting of Judge Stephanie Milroy (presiding officer), Joanne Morris, the Honourable Doug Kidd, Tuahine Northover, and Dr Angela Ballara, focused on the other aspects of the Crown's response to the situation facing TWOA, in particular:

- the extent of Crown intervention in the governance, management and strategic direction of TWOA through the review of the charter and profile for the institution; and
- the number and extent of quality audits and programme reviews of TWOA's activities contemporaneous with the review of the charter and profile that were conducted by Crown agencies.

TWOA, with its head office in Te Awamutu, is one of the largest tertiary education providers in the country, with 28,000 Equivalent Full-Time Students (EFTS) in 2004, and ten campuses and various satellites around the country. All witnesses heard by the Waitangi Tribunal, for both Crown and claimants, praised TWOA's successes in providing creative and innovative courses and methods of delivery that reach out to those, especially but not exclusively Māori, who have failed to thrive in the mainstream education system.

The Tribunal found that a wānanga is a uniquely Māori teaching institution that preserves and imparts the values of its founding iwi to all who wish to learn in this way. As such, it has responsibilities to its iwi and other stakeholders for providing the kinds of education needed by the communities it serves. Being recognised as a Tertiary Education Institution (TEI) under the Education Act 1989, TWOA also has responsibilities to the Crown for the proper use of public funds given to it to deliver quality education to its students.

The Tribunal found that the Crown had failed to conclude a partnership agreement that was initiated as part of the settlement of a 1999 Tribunal inquiry *(The Wānanga Capital Establishment Report)*, which concerned the granting of capital by the Crown for the establishment of wānanga for Māori. The agreement would have provided multi-level fora for early participation by wānanga in discussions and negotiations on major policy changes and funding issues, and would have facilitated the resolution of any differences between the parties as they arose. The failure to complete the agreement was a breach of the principles of the Treaty of Waitangi. In addition the Tribunal found that the Crown had formed an unduly limited conception of the nature and range of education that can be provided by a wānanga under the Education Act 1989. The Crown's attempt to impose its limited view on TWOA was also a breach of Treaty principles.

The Tribunal's recommendations focused on better practice for the future, and on ways to ensure that the relationship between TWOA and the Crown will be conducted in a respectful and supportive manner on both sides, as required by the principles of the Treaty.

Interim Reports on the ANZTPA Regime

The Tribunal released two interim reports on the Australia New Zealand Therapeutic Products Authority (ANZTPA) agreement during 2006. The claims concerned the ANZPTA agreement, which aimed to harmonise Australian and New Zealand medicine regulation and introduce stricter safety guidelines.

Claimant counsel in the Wai 262 inquiry argued that the ANZTPA regime could prejudice practitioners dispensing traditional rongoa Māori remedies, and wanted the proposed legislation stopped. Crown lawyers replied it was the intention of the Crown to exclude rongoa Māori from the legislation, the agreement, and associated rules.

The first report, ***The Interim Report of the Waitangi Tribunal in Respect of the ANZPTA Regime***, was released on 8 September 2006. The report directed the Crown to consult urgently with the claimants on the regime, but did not recommend halting the legislation.

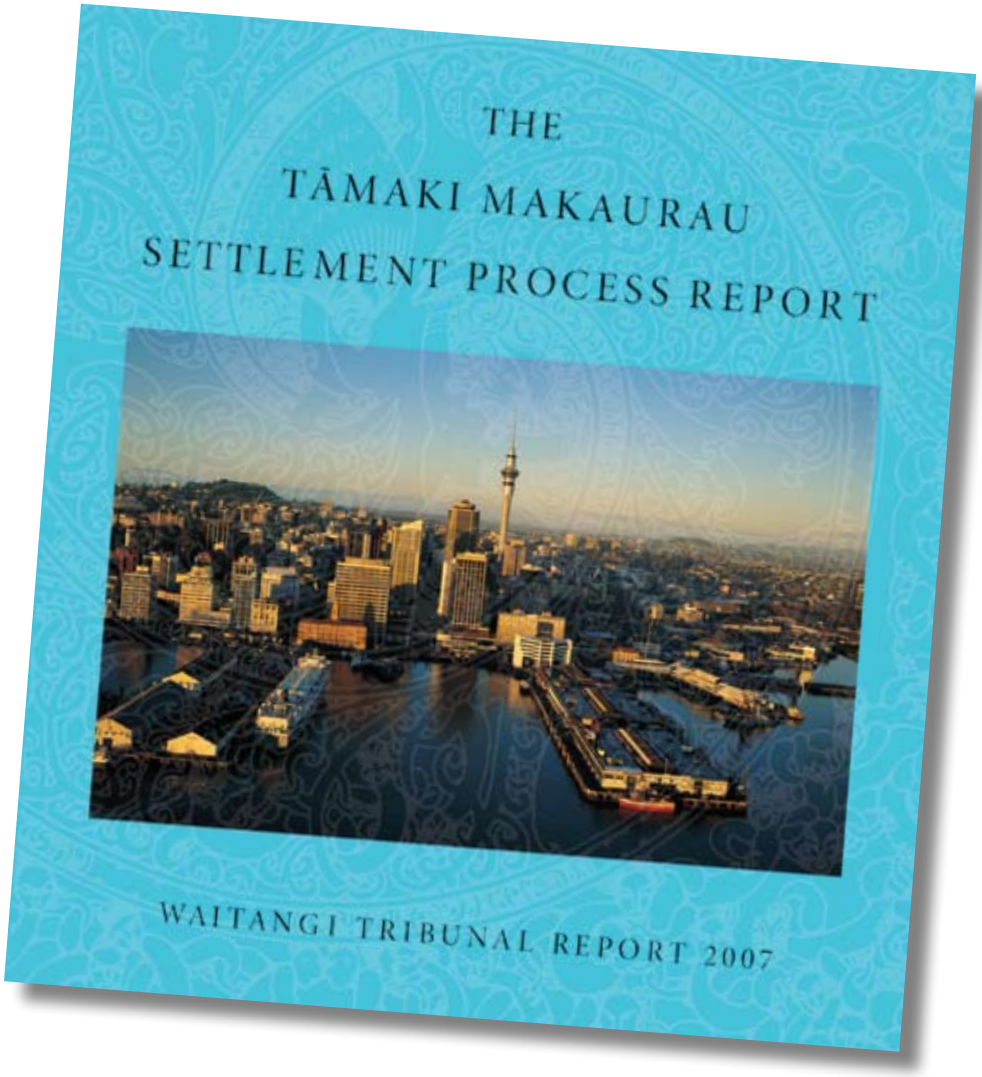
The second report, ***The Further Report of the Waitangi Tribunal in Respect of the ANZPTA Regime***, was released on 3 October 2006. The report noted that no agreement had been reached by the parties. It found that Crown and Māori objectives for the regulation of rongoa Māori were capable of harmonisation, and the ANZTPA agreement did not appear to pre-empt that outcome. The proposed legislation did not attract sufficient Parliamentary support to pass into law in 2007.

Tamaki Makaurau Settlement Process Report

The Tamaki Makaurau Settlement Process Report was released on 12 June 2007, the result of an urgent inquiry which took place in March 2007. The report concerns the process followed by the Office of Treaty Settlements (OTS) to arrive at a proposed Treaty settlement with Ngāti Whātua o Orakei. The Tribunal consisted of Judge Carrie Wainwright (presiding officer), Joanne Morris, and Wharehuia Milroy.

The inquiry was based on claims by several groups in the Tamaki Makaurau (Auckland) district, that the Crown had engaged in settlement negotiations with Ngāti Whātua o Orakei at the expense of other groups in the district. The claimants were unhappy about the way they had been treated, and pointed to what they saw as process failures, highlighting their very late invitation into discussions about customary Māori interests in Auckland. In particular, the claimants were concerned that, as part of the settlement process, Ngāti Whātua o Orakei were being offered exclusive possession of maunga in which they argued that they also had interests that had not been acknowledged.

The Tribunal found that the OTS did not balance the need to pursue and tend a relationship with Ngāti Whātua o Orakei in order to achieve a settlement, with its Treaty obligation also to form and tend relationships with the other tangata whenua groups in Tamaki Makaurau. While OTS had a policy concerning working with groups with overlapping interests, the policy was only vaguely defined, and in practice fell short of the standard required for a good administrative process in Treaty terms. Additionally, the redress being offered to Ngāti Whātua o Orakei was so poorly defined that other tangata whenua groups could not assess whether or not to rely on the Crown's assertion that it could make similar offers to them.



The Tribunal recommended that the arrangement with Ngāti Whātua o Orakei be suspended, and other groups in Tamaki Makaurau be encouraged to enter into their own negotiations with the Crown. This would rectify the omissions in the original settlement process, and enable a more equitable allocation of interests on settlement. The Tribunal further recommended that Crown policy and practice, with respect to managing relationships with groups other than the settling group, be made fair and compliant with Treaty principles.

Te Arawa Mandate and Settlement Reports

Since 2003, some tribes of the Te Arawa waka have been engaged in a process of negotiating a Treaty settlement with the Crown in recognition of historical grievances. Other Te Arawa groups have chosen to pursue a separate path towards settlement, but the Crown has not negotiated with them in parallel. In March 2004, the Crown formally recognised a Deed of Mandate submitted by the executive council of Ngā Kaihautu o Te Arawa (KEC) representing those seeking immediate negotiations. The Tribunal agreed to grant an urgent inquiry into claims about the role and responsibility of the Crown in the mandating process during the Te Arawa settlement negotiation and its outcomes.

The first ***Te Arawa Mandate Report***, released on 9 August 2004, inquired into and reported on claims concerning the Crown's decision to recognise the mandate of the KEC to negotiate the settlement of all Te Arawa historical claims. The Te Arawa mandate Tribunal panel consisted of Judge Caren Fox (then Wickliffe, presiding officer), John Baird, and Gloria Herbert. The Tribunal found there were flaws in the Crown's monitoring of the mandate process, but that the process was not at that time so deficient as to constitute a breach of the Treaty. The Tribunal did, however, make a series of 'best practice' suggestions, including suggestions for a process by which the KEC's mandate could be reconfirmed.

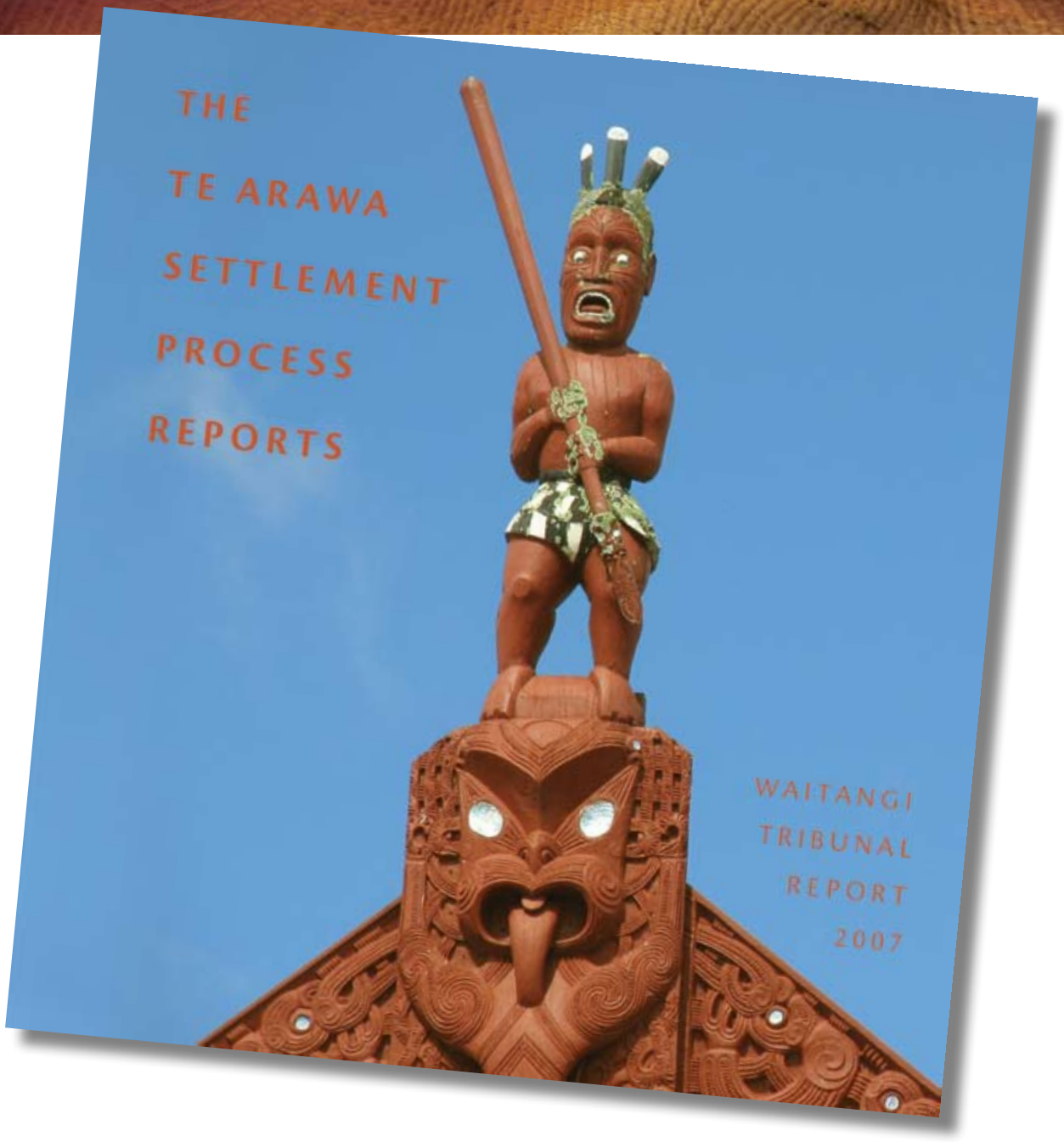
In the event, a reconfirmation process was carried out, monitored and ultimately accepted by the Crown. ***Te Arawa Mandate Report: Te Wahanga Tuarua***, released on 29 March 2005, reports on claims about this reconfirmation process, including allegations that the Crown and the KEC did not follow the Tribunal's suggestions when implementing the process. The Tribunal has found that the Crown did not breach the Treaty in its monitoring of the reconfirmation process, and in its acceptance of the outcome. Those Te Arawa groups which reconfirmed their support for the KEC's mandate had exercised their tino rangatiratanga, and could now negotiate their claims with the Crown.

The Tribunal's report then turned to the situation of the Te Arawa groups which had not reconfirmed the Executive Council's mandate – Ngāti Whakaue, Ngāti Wahiao, and Ngāti Rangiwewehi. The effect of the withdrawal of these iwi and hapu, in combination with the non-participation of Ngāti Makino, Waitaha, and Tapuika, was that almost half of Te Arawa had resolved to stand outside the KEC mandate. This made any potential settlement difficult because there would be very significant overlaps between core Te Arawa claims. The concern raised by the Tribunal was that the Crown's proposed process for managing these overlapping claims, as set out in the terms of negotiation, risked putting groups outside the KEC at a disadvantage.

The two Te Arawa iwi/hapu, Ngāti Makino and Waitaha, who were not part of the reconfirmation process, never mandated the KEC. In respect of their claims, the Tribunal found that the Crown had rejected its August 2004 suggestion that it negotiate with Ngāti Makino at the same time as with the KEC, and that it accord priority status to negotiations with Waitaha. These two groups have special circumstances, and have agreed to negotiate their claims together. The Tribunal found that the Crown was in breach of the Treaty principles of partnership and of equal treatment of tribes, when it recognised Ngāti Makino's mandate but never engaged in negotiations with them, and still would not negotiate with them alongside the KEC. Again, it recommended that the Crown commence negotiations with Ngāti Makino, and accord priority to negotiations with Waitaha. The Tribunal concluded that to proceed with negotiations with just over half of Te Arawa, while leaving the other groups waiting for an opportunity to negotiate and settle their claims, would be inconsistent with Treaty principles, and that Treaty breaches and prejudice would inevitably arise. The Tribunal suggested that the Crown should consider entering contemporaneous negotiations with groups outside the Executive Council mandate, such as the Ngāti Whakaue cluster and Ngāti Makino/Waitaha.

The KEC and the Crown signed their agreement in principle in September 2005, and the deed of settlement in September 2006. Following this, new claims were brought before the Tribunal in respect of the proposed settlement from the half of Te Arawa who chose to stand outside the KEC mandate. The Tribunal held hearings into the claims in January 2007, and its ***Report on the Impact of the Crown's Settlement Policy on Te Arawa Waka***, which considered cultural redress aspects of the settlement, was released on 15 June 2007. The Te Arawa settlement Tribunal panel consisted of Judge Caren Fox (presiding officer), Peter Brown, the Honourable Doug Kidd, and Tuahine Northover. In this report, the Tribunal found that the Crown breached the Treaty by failing to act as an honest broker during the KEC negotiation process, and by failing to protect the customary interests of overlapping groups in the cultural redress sites offered to the KEC. In particular, the Crown's processes for consulting with overlapping groups during the KEC negotiations were inadequate and failed to protect their interests.

On 30 July 2007 the Tribunal released its ***Final Report on the Impact of the Crown's Settlement Policy on Te Arawa Waka***, supplementing the earlier report. This second



report dealt with the major commercial redress element in the Kaihautu settlement: the transfer of approximately 51,000 hectares of Crown forestry licensed land to the affiliate iwi/hapu. The Tribunal found that the Crown had failed to engage fully and robustly with overlapping claimant groups during its negotiations with the KEC, and that the interests of claimants had been put at risk as a result, and the durability of future settlements called into question. The Tribunal also found inadequacies in the Crown's approach to assessing the sufficiency and appropriateness of the Crown forestry land remaining after the Kaihautu settlement for use in future Treaty settlements with other iwi.

The Tribunal recommended that the proposed settlement be delayed pending the outcome of a forum of central North Island iwi and other affected groups. The aim of this forum would be to negotiate between participants, according to tikanga, high-level guidelines for the allocation of Crown forest lands. The Tribunal considered that truly durable Treaty settlements would grow out of such a process.

In June 2007, the Crown indicated that the bill relating to the KEC deed of settlement would not be introduced into the House of Representatives before 31 July 2007, but the implication was that it might be brought before the House at any time after that. Because the Tribunal has no jurisdiction to comment on Bills before the House, timing was critical and the two Settlement reports were put out in pre-publication form. The Crown has since delayed introduction of the bill and has entered into discussion with overlapping claimants in respect of their forestry issues.

The Tribunal has now combined the two Settlement reports in a single published volume, issued in early November.

The Waitangi Tribunal Unit publishes Te Manutukutuku.

Physical: Level 2, Caltex Tower 141 The Terrace, Wellington, New Zealand
Nohonga: Papa 2, Caltex Tower, 141 The Terrace Te Whanganui-ā-Tara, Aotearoa
Postal: PO Box 5022 or DX SP22525 Pouaka Poutāpeta: 5022/DXSP22525
Phone/Waea: +64 4 914 3000 Facsimile/Waea: +64 4 914 3000
Web/Ipurangi: www.waitangitribunal.govt.nz

Waitangi Tribunal

Update your details or join our mailing list

To update your contact details with us or if you want to be added to our mailing list please fill in this form.

Name: _____

Phone: (_____)_____

Postal Address: _____

_____

City: _____

Email: _____

Post this form to the Communications Advisor,
Waitangi Tribunal, PO Box 5022, DX SP22525
Wellington/Te Whanganui-ā-Tara