

TE MANUTUKUTUKU

TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

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New Report Streamlines Claims Process

More than three years' research work on the general nature and extent of Māori historical grievances has culminated in the Rangahau Whānui ['Broadly-scoped Research'] National Overview Report.

Released on 5 May, the three-volume *Report* compiled by Professor Alan Ward summarises the systematic study of claims by Tribunal and commissioned researchers. Professor Ward is the author of *A Show of Justice* and numerous scholarly articles on New Zealand history. The *Report* identifies the main kinds of historical injury or grievance that are expressed in the hundreds of claims coming before the Tribunal, especially as they relate to land alienation.

Land was alienated under successive legal and administrative regimes. Therefore, the historical issues have been explored with the intention of determining the nature of the Crown's responsibility in Treaty terms. The outcomes of alienation have also been appraised, district by district, up to about the time of the Second World War.

The *National Overview Report* assesses the Crown's role in different forms of Māori resource loss over 15 regions [see map]. It analyses key forms of Treaty breach and their application over the 15 regions. The *Report* draws historical evidence together in order to point to ways in which claims might be researched, heard,

and settled. The long term goal is for claims to be categorised and move more swiftly through the hearings and resolution process.

At the release of the *National Overview Report*, Chief Judge Durie commented that

- 1 Auckland
- 2 Hauraki
- 3 Bay of Plenty
- 4 Urewera
- 5 Gisborne - East Coast
- 6 Waikato
- 7 Volcanic Plateau
- 8 King Country
- 9 Whanganui
- 10 Taranaki
- 11 Hawkes Bay - Wairarapa
- 12 Wellington
- 13 Northern South Is.
- 14 Southern South Is.
- 15 Chatham Islands



"...these [Rangahau Whānui] reports and Professor Ward's *National Overview* represent the most significant advance that has been made by the Tribunal to providing a planned approach to the management of Māori claims...I think it is by far the most exciting and important development to have occurred since the historic claims process was started by Government in 1985."

See pp 4-5 for information on how to obtain a copy of the *National Overview Report*.

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From the Director

The Casebook Method

With the introduction of the casebook method and the hearing district approach, many of you may have noticed that the Tribunal's processes are now more closely aligned with the process of negotiating claim settlements. There are advantages to the method but there are also things to be aware of.

The casebook method develops the Tribunal's practice of hearing together in one inquiry claims with a common element. The major difference introduced by the casebook method is that it requires the main historical issues in the claims to be fully researched before any of the claims are heard. As in the past, that research is entered on the record of inquiry and distributed to parties as it is received. But, using the casebook method, the main research reports – including those produced by the Crown – are also compiled by the Tribunal into a casebook which is then used at the hearings by both the Tribunal and claimant counsel.

The casebook does not need to contain legal submissions or the traditional or kaumātua evidence that will be presented at the hearings (although these will be included if ready in advance). Similarly, contemporary issues that do not require substantial research do not need to be included in the casebook.

The advantage of using the casebook method is that hearing time is significantly reduced as hearings do not need to stop when the need for further research is identified and only start again when that research has completed. The present inquiry into the eighteen or so Mohaka ki

Ahuriri claims in the Hawke's Bay is a testimony to this. That inquiry began in November 1996 and hearings should be over by December 1997 – a little over a year of hearings, compared with five years for the Taranaki claims. The casebook method is also flexible – in the forthcoming Kaipara inquiry, for example, a three-stage approach is being proposed to allow claimants whose research is already completed to be heard, while research into other claims continues.

Hearing Districts

Using the casebook method, the Tribunal is required to outline a hearing district based on the common elements in a grouping of claims. The setting of a hearing provides a focus for the research that the Tribunal will prepare for the purpose of a particular inquiry. Overlapping claimants (whose main claim lies outside the hearing district) may participate in the inquiry but may not be required to prepare research for inclusion in the casebook.

Eventually the patchwork of claims across the country will link up and no area is likely to be omitted. The

Rangahaua Whānui Project has established that the coverage of potential claims is such that no area of the country can be considered to be claim free.

Another effect of the casebook method is that all claims in a district will be identified and heard. The claim settlement negotiations carried out by the Office of Treaty Settlements for the Government towards comprehensive settlements indicates that all claims of a particular claimant group will be settled and the Tribunal will not be able to revisit them. That was the case with the Waikato-Tainui settlement and is likely to be the case with Ngāi Tahu. The Tribunal process recognises this and ensures that a district is comprehensively heard, for the Tribunal will not return after a settlement is negotiated.

Representation and Mandate

To lodge a claim before the Tribunal you only need to be a Māori who claims to be prejudicially affected by a law or by some Crown action. However, to settle a claim with government the current policy is that you need to have a mandate from the group who constitute the claimant body, be it an iwi, hapū, whanau, marae or some other grouping.

With the casebook method shortening the hearing process and given the Government demand to have mandates sorted out before you can enter the negotiation process, it is clear that those who are keen to seek settlement should be using the hearing process to also advance the issues of mandate.

These matters of mandate may not need to come before the Tribunal. However, the Tribunal does have powers to mediate matters in dispute between groups. The use of this mechanism for resolving disputes seems an effective way of sorting out issues prior to coming to the Government to negotiate.

Some may question the need to rush matters. Those who have gone through an elongated process such as Muriwhenua will tell you why. Large delays with little or no action or results make hearings difficult to manage. Delays also make it difficult keeping people committed to the process. Once the research work is done there should be no reason for unnecessary postponement. Public attitudes harden over long periods of uncertainty making the achievement of settlements increasingly difficult. Common sense tells us to do all the hard preparation work at the beginning. It takes longer to get to the table, but having got there the meal is ready. Not all will favour the changes, but all will benefit.

Morris Te Whiti Love Director



Morris Love

The Tribunal's Practice Note on the casebook method was reproduced in issue 38 of *Te Manutukutuku*. It is also available from the Registrar, tel: 04-499-3666.

Wai 262 Hearings to Commence

The first hearings for the Wai 262 claim are to commence in September in Te Tai Tokerau. The claim was originally filed in 1991 by representatives from Ngāti Kuri, Te Rarawa and Ngāti Wai from Te Tai Tokerau, and from Ngāti Porou, Ngāti Kahungunu and Ngāti Koata.

The claim will begin by hearing evidence from kaumātua and kuia. The first hearing of this evidence is likely to take place at Kaitiāia and will involve Te Rarawa and Ngāti Kuri claimants. The Tribunal will then travel to Ngāti Wai, Ngāti Porou, Ngāti Kahungunu and Ngāti Koata to hear their tribal evidence. The Tribunal plans to complete the hearing of all kaumātua and kuia evidence by the end of this year.

The claim seeks to re-establish te tino rangatiratanga in respect of the knowledge of native plants and animals and cultural taonga which, the claimants say, was traditionally maintained by them, the ownership of which was affirmed by the Treaty of Waitangi. The claimants say they have been prejudicially affected by Crown legislation and policies which have resulted in the compromising, or loss,

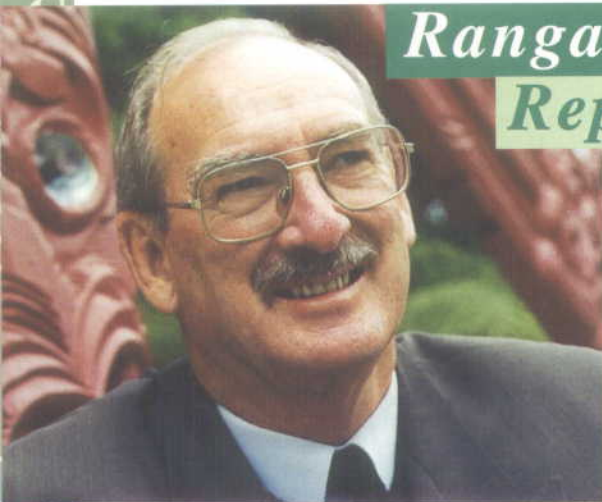
of their Treaty rights to knowledge pertaining to many diverse things – their traditional ecosystems, food and rongoa sources, important mahinga kai, and the harvesting of cultural taonga, such as the kūkupa and toroa, to name a few. Recent actions, including the signing of the Trade Related Intellectual Property Rights (TRIPS) section of the General Agreement on Tariffs and Trade (GATT), and resulting legislation, further eroded claims pertaining to their taonga, including cultural artefacts, images and whakairo.

The claim was granted urgency in 1995 and since then the claimants have, with very limited funding, been conducting research in furtherance of the claim. In the claimants view however, any undue delays they are put to will have significant effect on the

claim, particularly as more and more kaumātua and kuia pass away. "As each day passes, we lose more of the knowledge we are trying to preserve," says Gina Rudland, one of the solicitors working on the claim. "We welcome the day in the future when our people will be able to do all those things our tīpuna took for granted in the old times."

It is anticipated that the hearing will extend over the next 12 months.





Professor Alan Ward

Rangahaua Whānui: Reports Available

NATIONAL OVERVIEW

The *National Overview Report* summarises and analyses the information generated by the entire Rangahaua Whānui research programme. Some additional research was carried out by the National Overview Team (four researchers), and the three-volume report was written by Professor Alan Ward of the University of Newcastle. The *National Overview Report* assesses the Crown's role in different forms of Māori resource loss over 15 regions, and draws the historical evidence together in order to point to ways in which claims might be researched, heard, and settled.

Volume One

This volume includes an executive summary, a short summary of findings with regard to each district and national theme, and a discussion of possible strategies for dealing with historical Treaty claims.

\$34.95

Volume Two

This volume summarises and analyses the findings of the national theme reports. It provides an overview interpretation of how the various generic forms of Treaty breach and land loss may be explained and assessed on a national basis.

\$74.95

Volume Three

This volume provides a summary of findings for each of the 15 Rangahaua Whānui districts. It particularises the application of the themes discussed in *Volume Two* on a geographical basis, providing an overview of Treaty issues in each district.

\$44.95

All prices include GST and are subject to change as volumes are reprinted. Copies are available through all good book shops, or from:

GP Publications
Tel: 04-496-5603
Freefax: 0800-804-454.

A summary of the National Overview is also available on the Waitangi Tribunal's Home Page at:
<http://www.knowledge-basket.co.nz/waitangi/welcome.html>.

DISTRICT REPORTS

District 1 (Auckland)

Part One of this report was written by Dr Barry Rigby, Rose Daamen, and Paul Hamer. It deals with a region running from South Auckland to Muriwhenua from 1840-1873. Due to the size and complexity of this district, case studies were written on Old Land Claims (Bay of Islands), pre-1865 Crown purchases (Kaipara), and the actions of the Native Land Court (also Kaipara). Part Two of this report was written by Dr Michael Belgrave, dealing with the period from 1865 to 1908.

It includes a statistical analysis of land alienation across the whole district.

Part One: \$20.00 Part Two: \$15.00

District 5B (Poverty Bay)

This report was written by Sian Daly. It deals intensively with nineteenth-century issues, including the East Coast confiscation, the loss of land from 1870 to 1900 under the Native Land Court regime, the operations of the Validation Court, and the administration of surviving land by the East Coast Trust.

\$20.00

District 7 (Volcanic Plateau)

This report was written by Brian Bargh. It covers land alienation, the loss of mountains and lakes, population decline, and other key issues of relevance to claims in this district.

\$17.00

District 8 (Rohe Pōtae)

This report was written by Cathy Marr. It concentrates on the Aotea Block and the Ngati Maniapoto part of the Rohe Pōtae, from 1840 to 1920. Marr deals intensively with the processes of land alienation in the 1890s, when the government made the first major inroads to Maniapoto land. Her overview covers the second period of major land loss (1900-1920) in less detail.

\$15.00

District 9 (Whanganui)

Part One of this report was written by Suzanne Cross. She covers the period from 1840 to 1907, dealing with the New Zealand Company purchase, the Spain Commission, the railway expansion and nineteenth-century Crown purchases, and some case studies of particular alienations. Part Two of the report was written by Brian Bargh, and deals with the period from 1907 to 1990. Bargh examines the Stout-Ngata Commission, the loss of land through Land Boards and development schemes, twentieth-century Crown purchases, and struggles for control of the Whanganui river.

\$15.00

District 11A (Wairarapa)

This report was written by Paul Goldsmith. He concentrates on the major period of land loss, which took place through Crown purchases from 1853 to 1865, and considers the Treaty implications of the Crown's negotiations and contractual arrangements, the fate of reserves and the Wairarapa 5 percents, and other nineteenth-century land issues.

\$15.00

District 11B (Hawkes Bay)

This report was written by Dean Cowie and covers issues from 1840 to

1930. Cowie analyses the pre-1865 Crown purchases, the Mohaka-Waikare confiscation, the loss of land through the Native Land Court's actions and private purchases, the renewal of Crown purchases in the late nineteenth century, and the East Coast Trust. There is also a case study of the public works takings of Māori land.

\$15.00

District 12 (Wellington)

Part One of this report was written by Dr Robyn Anderson. It deals with the New Zealand company purchase of Port Nicholson, the major pre-1865 land purchases throughout this large and diverse district, the processes of sales and reserve making, and the operations of the Native Land Court in the Rangitikei-Manawatu. Part Two of this report was written by Dr Keith Pickens. It covers the period 1870-1970, and concentrates in particular on the processes of land alienation in the Horowhenua region, Ngarara, and Kukutaunaki, Māori complaints and petitions, and the impact and extent of land loss.

\$20.00

District 13 (Northern South Island)

Parts One and Two of this report were written by Dr Grant Phillipson. These reports concentrate on the major period of land loss, 1840-1865, dealing with the processes of Crown purchase and reserve-making, the outcomes for iwi, and tracing the alienation of the main reserves (D'Urville Island, Taitapu, and Wakapuaka). The reports also examine the social and economic impact of land loss.

Part One: \$17.00 Part Two: \$10.00

NATIONAL THEMES

National Theme A (Old Land Claims)

This report was written by Dr Barry Rigby, Matthew Russell, and Duncan Moore. It includes an overview analysis of Old Land Claims, four case studies of particular claims or types of claims, and a database providing statistical information of the pre-Treaty transactions. In addition, there is a

section dealing with the question of whether there was 'surplus land' wrongfully taken by the Crown from the New Zealand Company pre-treaty purchases.

\$10.00

National Theme C (The Crown's Treatment of Customary Tenure)

Part One of this report was written by Dr Hazel Riseborough. It analyses the various ways in which the Crown recognised, modified, abolished, or extinguished customary tenure in its dealings with Māori land in the nineteenth century. Part Two of this report was written by John Hutton, and it carries out a more intensive case study of the particular ways in which the Native Land Court dealt with customary tenure, including the issue of consistency between judges and over time in the Hauraki district.

\$10.00

National Theme G (Public Works Takings of Māori Land)

The principal report was written by Cathy Marr for the Treaty of Waitangi Policy Unit, which has agreed to the publication of this material as part of the Rangahaua Whānui programme. Marr prepared an overview of Crown policy and legislation with regard to public works takings and compensation, compared provisions and their application as between Māori and Pākehā, and also examined some particular takings to illustrate major themes and change over time. In addition to this report, Nita Zodgekar prepared a database and covering report on Gazette notifications of Māori land takings.

\$10.00

National Theme I (Rating of Māori Land)

This report was written by Tom Bennion. It includes an overview of government policy and legislation with regard to the rating of Māori land. Bennion does not, however, provide case studies of the application of rating policy and laws.

\$10.00

National Theme K (Māori Land Boards)

Dr Donald Loveridge wrote this report on the operations of the early twentieth-century Māori Land Boards, which were responsible for carrying out Liberal Government policy for the alienation of all "unused" Māori land. Loveridge provides a detailed analysis of the policy and legislation which established the boards, and an overview of their administration and extensive impact on Māori land loss.

\$10.00

National Theme L (Reserves Policy and Restrictions on Alienation)

Jennifer Murray wrote this two-part report. Part One analyses the Crown's reserve policy in the period 1840-1865. Murray attempts to determine the reasoning behind the making of reserves, their functions and purpose, and a policy as to their legal status, administrations, and inalienability. Part Two deals with the related question of Restrictions on Alienation, which were supposed to have been imposed on all blocks which passed through the Native Land Court if there was a risk of landlessness. Murray examines whether restrictions were imposed consistently (or at all), and the policies and administrative mechanisms for their removal.

\$10.00

National Theme N (Gold Mining: Policy, Legislation, & Administration)

This report was written by Dr Robyn Anderson. It covers the issue of whether "royal" metals belonged to Māori or the Crown under common and custom law regimes. Anderson also assesses historical efforts to obtain cession of mining rights to the Crown on Māori land and the impact on Māori in terms of profit and land loss, with case studies of Taitapu in the South Island and Hauraki in the North Island. Anderson also considers briefly the question of other mineral wealth (such as petroleum and silver).

\$10.00

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Ngā Poroporoaki

Brett Sinclair 1962-1997

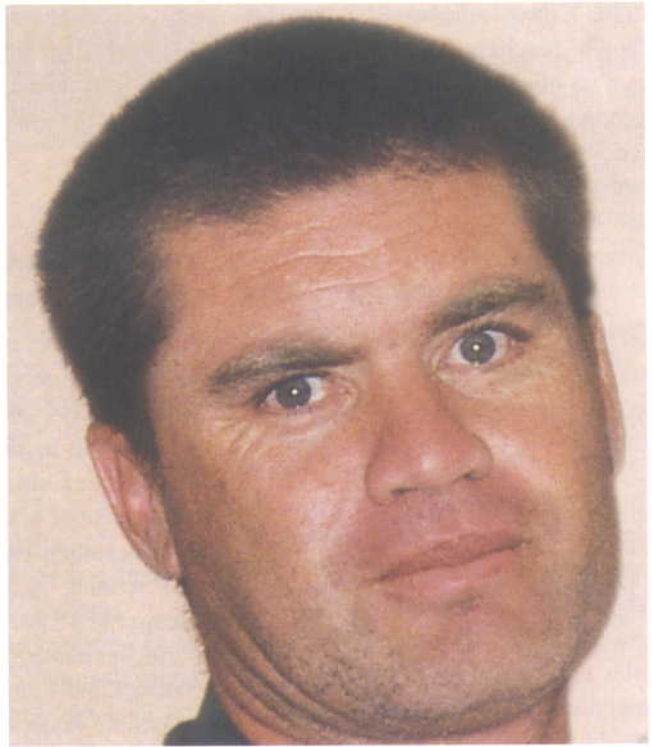
Our heartfelt support goes to the whanau of the Tribunal's Information & Library Manager Brett John Sinclair (Muaupoko, Ngāti Raukawa) who passed away suddenly on 30 May. Since November 1994, Brett supported Tribunal members, staff and the general public in his work running the library, handling information requests and developing electronic resources. Among other traits, he will be fondly remembered for his quick sense of humour and his relaxed approach to life. Those of us who worked closely with Brett miss him as a person and a friend. Plans are underway to develop a memorial for Brett at the Tribunal library.

"Me tangi, ka pā ko te mate i te marama."

E te tuakana kua ngaro koe i te tirohanga kanohi, ki te kāinga hoki a kui mā, a koro mā, i reira koe noho tūturu ai.

Kua pikingia e koe ngā poutama i whakairongia e te matua nui i te rangi hei ara hoki ki te ao mutunga mō tāua te tāngata. Whakangaro atu koe e te tuakana ki runga i tō waka i waihotia ai e tō tātou mātua tupuna.

Ka maumahara i ngā āhuatanga ki a koe, arā, te whakatoī tangata, whakaharikoā tangata hoki. Ahakoa ko wai te



tangata, nō whea rānei he rangatira koe ki te manaaki tangata.

E hoa e kore te ngākau e wareware ki a koe.

Nō reira e Brett, kei te mamae, kei te hotuhotu te whatumanawa tēnei ō hoa mahi o te Rōpū Whakamana i te Tiriti o Waitangi e tangi nei. Kua pā te ngau kino i tō mātou ngākau i tō wehenga atu ki tua o te paerau. Nō reira e te tuakana, haere, haere, haere rā.

Nā mātou ōu hoa mahi.



Paul Temm, QC

The Tribunal also passes on its sincere condolences to the family and friends of Justice Paul Basil Temm, QC, who passed away in Auckland on 26 May, aged 66 years. He served as a member of the Waitangi Tribunal from 1982 to 1985, during which time he heard and reported on three claims including Wai 4 *Kaituna River Report* 1984, Wai 8 *Manukau Report* 1985, and Wai 11 *Te Reo Maori Report* 1986. Justice Temm commented that his experience with the Tribunal heightened his awareness of the relationship between Māori and European New Zealanders. Since his work as a Tribunal member, Justice Temm wrote *The Waitangi Tribunal: Conscience of the Nation*, and subsequently served as a High Court Judge in Auckland. Justice Temm, sworn in as a judge in February 1991, had a long career as a barrister, solicitor and Queen's Counsel. He argued several appeals before the Privy Council and was senior defence lawyer in the initial Arthur Allan Thomas murder trial in 1971.

New staff members

The Tribunal welcomes six new researchers to its staff.

Keith Pickens holds MA degrees from the University of Canterbury and Victoria University of Wellington and also holds an MA and PhD from Washington University, St Louis. His PhD is a study of the demography of the Canterbury settlement, and he is the author of several articles on the history of nineteenth century Canterbury. Keith has recently worked for the Waitangi Tribunal as a contract researcher for the Rangahaua Whānui project, writing parts of the Wellington district report and the *National Overview Report*. He will be researching claims in the central North Island district.

Tata Lawton is from Feilding, and his tribal affiliations are Ngāti Kauwhata/Raukawa, Ngāti Mahanga and Ngāi Tai. Tata graduated from Massey University with an MA(Hons) in Māori. His thesis is entitled *Hato Paora College: First Fifty Years*. Tata researched for the 28 Maori Battalion Oral History Project on C Company from 1994, and built a database containing information on every man that served in the 28 Maori Battalion. He is married to Hinenui Tipoki-Lawton (Ngāti Kahungunu, Tūhoe) and they have five children.

Katherine Orr-Nimmo was brought up in Wellington and is of British descent. She has a DPhil in Modern History from Oxford University. Katherine worked as an Anglican priest for nine years. She then researched and wrote a report on the East Coast Māori Trust for the Crown Forestry Rental Trust, and is now working on a Strategic Overview of the East Coast district.

Dion Tuuta is from Taranaki, and is of Ngāti Mutunga and Ngāti Tama descent. He has an MA in History from Massey University. His thesis



Left to right: Keith Pickens, Katherine Orr-Nimmo, Dion Tuuta, Tata Lawton, Robert McClean

examines the impact of the Stout-Ngata Commission on subsequent Māori land law. In 1994 Dion worked as a research assistant on the Tauranga claims, and in 1996 he worked on the Crown Forestry Research Trust's *Māori Land Development* project. Dion is currently working on a survey of any legislation which affected New Zealand's inland waterways.



Lynell Morris

Lynell Morris was brought up in Masterton and Southland. Her tribal affiliations are Ngāti Kahungunu, Rangitāne, Ngāti Raukawa. She graduated from Victoria University of Wellington with a BA in History and a BA(Hons) from the University of Canterbury. Lynell is working for the report writing team.

Robert McClean traces his family back to Croatia, Scotland, the Shetland Islands and Ireland. Robert has an MPhil with distinction in historical geography. His thesis is entitled *Power/Knowledge and Space: The Creation and Alienation of the*

'Reserve' at Porirua. Robert has worked for Te Rūnanga o Toa Rangatira and the Porirua City Council on a management strategy for Māori historical sites in Porirua. He is currently researching into the Wai 228 claims against the continued discharge of sewerage from the Katikati pipeline onto the western shore of Matakana Island.

Richard Moorsom was brought up in South Africa and England. He graduated with an MA in African Studies from the University of Sussex, Brighton. Richard has published a number of articles and books on the social and economic history of Namibia, focusing on colonisation, land loss and labour migration. Since arriving in New Zealand in 1996, Richard has contributed research towards a social history report for Rangitāne/Manawatu. He is now researching several of the Hawkes Bay claims.



Richard Moorsom

continued from page 4

National Theme P (Māori Land and the Māori Land Court in the 20th Century)

Two reports were written to cover aspects of the National Theme. The first report, written by Tom Bennion, covers the interactions between the Māori Land Court and Land Boards from 1909 to 1952. It deals largely with the court and boards' role in the process of land alienation. The second report, written by Tom Bennion and Judi Boyd, covers succession law and succession cases, which were the main business of the court in the 20th century.

\$10.00 each

District reports are available from the Editor,
Waitangi Tribunal Tel: 04-499-3666.

National Theme Q (Foreshores)

This report was written by Dr Richard Boast. It deals with the issue of whether the foreshore belonged (or belongs now) to Māori or the Crown under common law, statute law, and customary law. Boast examines case law and suggests that the current situation of ownership may be more complex than was previously thought, and that Māori have surviving ownership as well as Treaty rights in foreshores.

\$10.00

National Theme S Preliminary Report (Native Townships)

This report was written by Suzanne Woodley. It covers the compulsory leasing of Māori land for townships under special legislation, the leasing arrangements under titular Māori own-

ership, and the government's eventual abandonment of the trust system in favour of buying the land to give settlers the freehold, or setting up perpetual leases for peppercorn rentals.

\$10.00

National Theme U (Indigenous Flora & Fauna)

This report was written by Dr Wendy Pond. It covers the Crown's legislative regime for managing certain natural resources, the ecology of traditional Māori resource use, and the impact of clearing and settlement on traditional resource use. Pond provides a case study of different whitebait species as an illustration of her themes. In addition, she discusses the effects of government policies on the practice of traditional Māori medicine.

\$10.00

NEW CLAIMS REGISTERED

Wai No.	Claimant	Concerning
664	Thomas Abraham McCausland	Waitaha Tribal Estate, Tauranga
665	Pine Nicholls	Tauhara Middle Block, Taupo
667	Kingsford Rihari Tamati & others	Manutahi Block claim
668	Wi Parera Te Kani	Ngai Tukairangi Block claim
669	James Turi Koko	Tauhara Middle Block (Ngati Hineure) claim
670	Wiremu (Bill) Wineera & others	Tauhara Middle Block (Ngati Te Urunga) claim
671	Te Kenehi Robert Mair & others	Whanganui Groundwater claim
672	Tatai Allen & others	Tauranga Moana (Ngati Hangarau rohe) claim
673	Sir Graham Latimer & others	Maori Broadcasting Policy claim
674	Kaipara Consolidated Claims	Kaipara Consolidated Claims
675	Joseph Te Poroa Malcolm	Lake Okataina & Surrounding Lands claim
676	Raewyn Marcelle Bennett & others	Te Awa O Ngatoroirangi claim

HEARING SCHEDULE

7-11 July 1997, Wellington Wellington Tenths Hearing	14-18 July 1997, Turangi Turangi Township Hearing
11-22 August, Kaipara Kaipara Claims Hearing	15-19 September, Wai 262 Indigenous Flora and Fauna Hearing
29 September-3 October 1997 Mohaka ki Ahuriri Hearing	20-30 October, Mohaka, Wairoa Mohaka ki Ahuriri Hearing
5-7 November, Wai 262 Indigenous Flora and Fauna Hearing	



DEPARTMENT FOR
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TE TARI KOOTI

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