Waitangi Tribunal

Te Rōpū Whakamana i te Tiriti o Waitangi

Te Manutukutuku

Hakihea 2001 | 54 | December 2001

Napier Hospital Report Completed

***The Napier Hospital and Health Services Report* on the Napier Hospital (Wai 692) claim was released on September 24 2001. The claim was brought by Hana Cotter, Tom Hemopo and Takuta Emery on behalf of Te Taiwhenua o Te Whanganui a Orotu (Ngāti Kahungunu) and heard by the Mohaka ki Ahuriri District Inquiry Tribunal. It focuses on the closure of Napier Hospital in the 1990s and the delivery of state health services to Ahuriri Māori from the mid-nineteenth century to recent times.**

The Waitangi Tribunal has found by and large the claim well-founded. The report confirms a broad range of grievances against the Crown, some of them specific and local, others addressing core aspects of the Crown's Treaty obligations to Māori in the health sector.

Specific grievances focus on Napier Hospital. The claimants say that their tūpuna were promised a hospital on Mataruahou, the hills overlooking central Napier, as part of the price of the large Ahuriri block purchased by the Crown in 1851. They say that, by closing Napier Hospital without adequate consultation with Ahuriri Māori, the Crown breached Treaty principles.

The Napier Hospital and Health Services Report provides some guidelines about the Crown's relationship and responsibilities to Māori in the health sector. The Report has found that the terms and principles of the Treaty of Waitangi place a general obligation upon the Crown to ensure equal health service standards and outcomes for Māori. The Tribunal reported that the Crown failed to deliver for Ahuriri Māori in both historical and recent times.

The report has studied the health sector reforms of the 1990s, and alleges that the Crown, through its health agencies operating in Hawkes Bay at the time, denied local Māori proper work-force participation and effective representation in the decision-making structures. The agencies did not devote sufficient effort to the national policy goal of improving the markedly

Judge Isaac

poorer health status of local Māori; failed to integrate tikanga Māori into culturally appropriate mainstream services for Māori; and did not involve Māori in monitoring services and health outcomes for Māori. Nor did the agencies fulfil the Crown's partnership obligations by giving sufficient assistance to Māori health providers.

"The Tribunal looked at a number of issues that arose during the 1980s and 1990s in its report", said the Presiding Officer, Judge Wilson Isaac. "These issues included consultation with Ahuriri Māori on decisions affecting the status of Napier Hospital such as regionalising hospital services in Hastings and downgrading or closing Napier Hospital."

"Representation at decision making levels was another issue where the Crown was in breach of the principle of

Continued on page 3

Editorial

Kia ora tātou katoa –

The topic on which I am to enlighten us all is Māori Land Court judges in the Waitangi Tribunal. In embarking upon this kōrero I have the disadvantage of having been a Māori Land Court judge and a member of the Waitangi Tribunal for only a few months. But, in common with the rest of the legal profession, I am happy to hold forth on a topic with which I have only a small familiarity!


Carrie Wainwright

The first thing to be said about Māori Land Court judges on the Waitangi Tribunal is that we are members of the Waitangi Tribunal simply by virtue of being appointed as judges of the Māori Land Court. This is called an 'ex-officio' appointment. We don't have to do anything special to belong to the panel of Waitangi Tribunal members from which members are chosen to sit on particular inquiries. We become Waitangi Tribunal members automatically when the Governor-General gives us the nod as a judge.

When we are appointed to a particular Waitangi Tribunal inquiry, we judges can only be appointed as presiding officers. We cannot be appointed as ordinary members. This is a disadvantage for any judges who have not had previous experience practising in the Waitangi Tribunal because they do not get the opportunity to just sit as an ordinary member on one or two inquiries to 'learn the ropes'.

However, the latest crop of Māori Land Court judges all come from a background of working in the Waitangi Tribunal as lawyers. This means we are *very* popular with the Waitangi Tribunal! Because, you see, when Māori Land Court judges are appointed to a Tribunal, they simply perform those functions in addition to their Māori Land Court functions.

Currently, a number of us are presiding over Waitangi Tribunal inquiries, and appointments to upcoming inquiries are pending. Of the big district inquiries currently underway, Deputy Chief Judge Isaac is well down the track with a sitting Tribunal in the Northern South Island inquiry; Chief Judge Williams is just hitting his straps in the interlocutory stages of the Gisborne Inquiry, with the first hearings starting mid November; and I have only recently embarked on a journey of discovery in the Wairarapa Inquiry. The Chief Judge and I have also been dealing with a number of inquiries that have been granted urgency in the last 12 months. In the next 12 months, expect to see Māori Land Court judges appointed as presiding officers in the Whanganui and Urewera district inquiries, and perhaps one or two others too.

The Waitangi Tribunal work is fascinating, and a wonderful adjunct to our other (equally interesting) work in Te Kōti Whenua Māori. We are so fortunate to be engaged in such varied and stimulating mahi. Many Waitangi Tribunal claims include allegations relating to the work of the Native Land Court, and the very detrimental effect that the work of that Court had upon te iwi Māori. The Native Land Court was of course the predecessor of our own Court, and it is instructive for those of us sitting as judges today to reflect upon the damage that was wrought by sometimes well-meaning judges in the past. History has many lessons to teach, and our working in the Waitangi Tribunal certainly presents a marvellous opportunity to learn them.

For my part, I find it very useful having had a background of working in the Waitangi Tribunal, because it has given me a historical perspective for my work in the Māori Land Court. I feel that it is important to understand *why* we are now working with a system of land tenure that is so idiosyncratic and unwieldy. It emphasises for me the duty owed by judges and staff to ensure that we make the operation of this Māori land-holding system that has been visited upon te iwi Māori as painless as possible. For sure, it is not a system that anyone would ever have chosen, but 150 years down the track it is impossible now to unravel the mistakes of the past.

So here we all are, working to improve the system for the future in Te Kōti Whenua Māori, and reflecting on our troubled past in the Waitangi Tribunal.

But working in the Waitangi Tribunal is by no means a totally sobering experience. I'm really enjoying getting to know the tangata whenua of the Wairarapa. Already, I look at the whenua there with new eyes when I cross the Rimutaka ranges from Wellington, remembering the kōrero I have heard about traditional rohe and tribal interrelationships. By the time that Inquiry has finished, I won't be able to go to the Wairarapa at all without anecdotes flooding through my mind, overlaying the present with the past, and the past with the present. And that's a wonderful privilege, to my way of thinking.

Hei kōnei rā,

Carrie Wainwright
Māori Land Court Judge and
Waitangi Tribunal Presiding Officer

Fast-Track for Central North Island Claims

The Waitangi Tribunal has agreed to give priority to the hearing of claims in the Central North Island.

In a memorandum released in early September, the Tribunal said it was satisfied that the Central North Island claims together carried enough weight for them to be given greater priority in the forward programme. It noted that in 1989, in the settlement which had led to the Crown Forest Assets Act of that year, both the Crown and Māori had agreed that forestry claims should be settled with all possible speed. Twelve years on, numerous forestry claims are still outstanding. The Central North Island claims represent about 60 percent in value of all remaining forestry claims. Fast-tracking the Tribunal's inquiry into those claims will therefore go a long way towards meeting the 1989 objective.

The memorandum also noted the importance of forestry to the national economy. Settling the issue of who owns the land under the forest should remove uncertainty and so assist the industry to carry out long-term planning.

A further reason for the numerous Central North Island claims being given greater priority is that many of the claimants have been willing to consolidate under an umbrella grouping, the Volcanic Interior Plateau (VIP) claim. This is likely to lead to significant efficiencies in time and resources for both the claimants and the Tribunal, and there is also evidence that other multi-claim groupings are now forming.

The Tribunal has indicated that, given the large number of claims involved, the Central North Island will be divided into three districts for the purpose of hearings. These districts will be Rotorua (in the north), Taupo (in the south) and Kaingaroa (in the east).

During October, the Tribunal held two judicial conferences in Rotorua. The purpose of these conferences was to clarify the Tribunal's *new approach* to hearings; to discuss the proposed Rotorua and Kaingaroa inquiry boundaries as they relate to the Urewera hearing district; and to establish the ability of non-VIP claimants to participate in the hearings. There was also considerable discussion of the Crown Forestry Rental Trust's research programme. This includes overview reports and a detailed database, which will be available to all claimants in the Central North Island.

Rawiri Te Whare, Donna Hall and Joe Malcom

The Tribunal's *new approach* is already being used in the Gisborne and Wairarapa inquiries and is resulting in a more efficient process and significant savings in time. Particular benefits of the approach are the rationalisation of research and the engagement of the Crown's attention at a much earlier point in the proceedings.

Continued from page 1

partnership with an imbalance of Māori representation on the Hawkes Bay Hospital Board."

In their closing submission the claimants argued that the Crown, and the health sector agencies, had breached Treaty principles by failing in major respects to protect and improve Māori health outcomes. The Crown denied the failings vigorously and pointed to substantial recent efforts, both in mainstream health services and in promoting Māori health providers. The issues in dispute are likely to make the Waitangi Tribunal's findings on this claim of broad relevance to the state health sector.

"Neither a specialist body nor a comprehensive study of health needs is required for assessing the need for a Māori health facility on the Napier Hospital site," said the Tribunal. "The Hawkes Bay Hospital Board needs to inform itself appropriately and discuss with the claimants the need for a study of Māori health status."

The Waitangi Tribunal has recommended a community health centre, "governed by trustees on behalf of Ahuriri Māori and bicultural in character, serving the special needs of Ahuriri Māori, but open to all."

"The Crown must take early steps to conclude an agreement in principle with the claimants on the concept, general location and endowment of a community health centre, within the framework of current government policy on reducing health inequalities and building the capacity of Māori health providers."

Major Research Projects Completed for the Wai 262 Inquiry

Between 1999 and 2000 the Waitangi Tribunal commissioned four major overview reports for the Indigenous Flora and Fauna and Cultural Property Claim (Wai 262). These reports have recently been published by the Tribunal. Three of the overview reports provide an account of Crown actions in relation to flora and fauna in different periods. The fourth examines the effect Crown actions have had on Māori knowledge systems.

John Tahuparae, Keita Walker, Judge Richard Kearney, Roger Maaka, Pam Ringwood

The theme that runs through the three reports on flora and fauna is the Crown's failure to meaningfully recognise and give effect to Māori authority and values in relation to the biota of New Zealand. In their report on the period 1840 to 1912, Dr Robin Hodge, Cathy Marr and Ben White show that when the official colonisation of New Zealand began in 1840, Māori were in complete control of all the natural resources of the country. However, by 1912 Māori had lost access to and control over many of those resources, including flora and fauna. The report finds that Māori lost access to flora and fauna in the nineteenth century primarily through being dispossessed of large tracts of their territory, as well as through habitat destruction and legislation governing access to birds. The authors conclude that Māori were never consulted about the development of this legislation, and that they never knowingly surrendered their rights to native birds, rights that many Māori considered were guaranteed to them by the Treaty of Waitangi.

In his report covering the period 1912 to 1983, Dr Geoff Park devotes chapters to Crown actions and policies governing such things as wetlands, coastal ecosystems, lakes and rivers, protected areas, animal and plant protection, and acclimatisation societies. Through this survey it becomes clear that the Crown very rarely recognised Māori customary rights or made provision for their exercise in management structures in respect of flora and fauna. These findings lead Dr Park to conclude that between 1912 and 1983, Māori were effectively 'written out' of both New Zealand's natural history and its systems for the protection of indigenous flora and fauna. The thesis gives rise to the report's title, *Effective Exclusion.*

Robert McClean and Trecia Smith's report looks at Crown actions in relation to flora and fauna from 1983 to 1999 – a period that saw New Zealand's conservation and environmental administration and legislation undergo major reform. A consequence of these reforms was that Māori values in relation to flora and fauna were afforded greater recognition in management regimes than they had received in the past. For example, references to the Treaty were included in new legislation such as the Resource Management, Conservation, and Environment Acts. However, the report points out that although some significant changes have occurred, in many ways Māori are still relatively powerless to access and control indigenous flora and fauna on their own land and on Crown and privately-owned land. In addition to covering the development and implementation of resource management and conservation law and policy, the report also covers Crown policy and practice relating to science and research, new organisms, biosecurity and plant variety rights.

The overview report on the effect of Crown actions on Māori knowledge, written by Dr David Williams, examines official Crown policy on race relations, Māori language, education, and cultural practices such as tangihanga and tohungatanga. The report's coverage of general Crown policy on race relations provides an excellent account of the political context in which many Crown actions and policies existed and will be a useful aid to people with an interest in the history of a wide variety of policy areas.

Along with the four overview reports, the Tribunal has also published two other reports completed for the Wai 262 inquiry in 1998: a report by American historian Jim Feldman on Māori access to kererū, and an exploratory report by David Williams on Mātauranga Māori and taonga. All the reports are available for purchase from the Waitangi Tribunal. Please contact Phyllis Ferguson on (04) 914 3000 to place an order. Publication of these reports was made possible with assistance from Te Puni Kōkiri.

WAI 262: THE INDIGENOUS FAUNA AND FLORA AND MĀORI INTELLECTUAL AND CULTURAL PROPERTY CLAIM

Several new features are contributing to the progress of the Wai 262 inquiry.

First, the Tribunal has established a new indicative timetable for the Wai 262 inquiry. Although this timetable will be demanding, and will require Crown counsel, claimant counsel and the Tribunal to devote sufficient resources to the inquiry, it will enable the inquiry to reach the milestone of a final report.

Secondly, as a result of a request from claimant counsel, the Tribunal has introduced the *new approach*, into the Wai 262 inquiry, requiring claimants to file final amended statements of claim and the Crown to file a statement of response. The Tribunal will then prepare a statement of issues that identifies all Treaty issues associated with the inquiry. The draft statement of issues should be completed by April 2002.

Hearings have been timetabled for claimants' expert witnesses in March 2002. All hearings are scheduled to be completed by December 2002.

A novel aspect of the Tribunal's Wai 262 process is its intention to hold seminars for third parties who wish to present evidence in the Wai 262 inquiry. These seminars, scheduled for mid-2002, will aim to assist third parties to gain a better understanding about the Tribunal's process and the issues raised by the Wai 262 claims. The workshops also aim to promote cooperation between the various third party groups in preparation for hearings and to determine which third party groups will be given hearing time to present evidence.

The Tribunal has established a new facilitation team to manage the Wai 262 inquiry:

Grant Phillipson:	Inquiry Supervisor
Robert McClean:	Claims Facilitator
Turei Thompson:	Claims Administrator.

Details of the reports are as follows:

David Williams, *Crown Policy Affecting Māori Knowledge Systems and Cultural Practices* ($20 incl GST)

Robin Hodge, Cathy Marr and Ben White, *The Crown and Flora and Fauna: Legislation, Policies, and Practices, 1840–1912* ($25 incl GST)

Geoff Park, *Effective Exclusion? An Exploratory Overview of Crown Actions and Māori Responses Concerning the Indigenous Flora and Fauna, 1912–1983* ($35 incl GST)

Robert McClean and Trecia Smith, *The Crown and Flora and Fauna: Legislation, Policies and Practices, 1983–1999* ($40 incl GST)

Jim Feldman, *Treaty Rights and Pigeon Poaching: Alienation of Māori Access to Kererū, 1864–1960* ($10 incl GST)

David Williams, *Mātauranga Māori and Taonga* ($20 incl GST)

Tribunal's Gisborne District Inquiry

The Tribunal's Gisborne district inquiry has completed its pre-hearing conferences, and is moving into hearings. After the completion of casebook research in January 2001 all claimants filed comprehensive "statements of claim". These set out the many grievances of the claimant groups in more detail than in previous inquiries of the Tribunal. They were followed by the Crown's "statement of response". The statement of response is basically the Crown's reply to the claims of the Turanga claimants. The Crown made a number of early concessions and has provided parties with a clear idea of its stance on certain issues. Again this is the first time the Crown has ever done this.

The Tribunal's "statement of issues" was released in August. This document sets out the issues that will be dealt with by the inquiry and brings focus to the process. It took note of the matters raised in the claimants' statements of claim, and the Crown's statement of response, distilling key areas of investigation. This approach is designed to stop hearings 'blowout' – this is the introduction of new claimants, new claims and new issues late in the process. Hearings 'blowout' has created pressure to extend inquiries by many years in other districts.

The last judicial conference, held in Gisborne on 24 September 2001, set the order of hearings. Claimant groups had earlier reached an

Continued on page 6

Continued from page 5

agreement among themselves as to their order of appearance and the time each group realistically needed. This was of considerable assistance to the Tribunal. All parties now know when they will appear and how long they have to present their case. They also know which witnesses will be called, and for what purpose. All of this was done months before hearings started.

A total of seven weeks of hearing has been budgeted for the inquiry, including a week for Crown evidence and a week for closing submissions. Hearings will take place at a rate of one week per month until May 2002. A pōwhiri to open the hearings was held on Sunday 18 November at Whakato marae, Manutuke. This was followed immediately by the first hearing week, running from 19 to 23 November.

Hearings will start with a co-operative week of claimant evidence. Claimants will work together to present evidence relating to events after the signing of the Treaty up until 1873. A separate day is reserved for environmental matters. The subsequent four weeks of claimant hearings will be used by the different claimant groups on their own marae.

Overall, there is a high level of preparation among all parties. This bodes well for the hearings themselves. The Crown has engaged constructively in the process from an early stage, and the claimants have worked hard to date to meet Tribunal deadlines and prepare their cases.

The members of the Gisborne Tribunal include Chief Judge Williams, who will preside, Dame Margaret Bazley, Professor Wharehuia Milroy and Dr Ann Parsonson. Dame Bazley and Dr Parsonson were recently appointed to the Tribunal.

Waitangi Tribunal Welcomes New Members

Two new members have been appointed to the Waitangi Tribunal. They are **Dame Margaret Bazley**, of Wellington, and **Dr Ann Parsonson**, of Christchurch.

Dame Margaret has been one of the country's leading public service chief executives of the past decade. Most recently she has been the acting Chief Executive for the Department of Work and Income. At various times she has been chairperson of the New Zealand Fire Service, Chief Executive of the Ministry of Social Policy, Director-General of Social Welfare and Secretary for Transport.

Dame Margaret Bazley, Dr Ann Parsonson

Three New Historians Join the Waitangi Tribunal

Rebecca O'Brien, Ewen Johnston, and Lecia Schuster

The Waitangi Tribunal has appointed three historical researchers. They are **Lecia Schuster**, **Rebecca O'Brien** and **Ewen Johnston**. They will work on the Urewera inquiry.

"It is pleasing to welcome someone who understands the machinery of government. This is an area where we have had a shortage of experience," said Chief Judge Joe Williams at the 2001 Waitangi Tribunal Members Conference in September.

Dr Ann Parsonson is a senior New Zealand historian. She is currently a senior lecturer in history at the University of Canterbury and part-time senior fellow at the University of Waikato.

Dr Ann Parsonson has extensive experience in historical research for Waitangi Tribunal claims. She has been involved in three major iwi claims: Ngāi Tahu, Taranaki and Waikato.

Lecia has extensive experience in land claims in South Africa. Her MA thesis was about the expropriations and restitution of land rights in Port Elizabeth. She subsequently worked at the Department of Land Affairs and later, at the Land Claims Commission.

Born in Gisborne, Ewen has an MA and PhD in history. His MA thesis studies indigenous responses to missionary activity in Vanuatu. His PhD looked at Representing the Pacific at International Exhibitions 1851–1940. Ewen has tutored and lectured at Auckland, Victoria and RMIT (Melbourne) Universities.

Rebecca is a graduate of Victoria University with an BA(hons) in history. She specialises in the preservation and interpretation of physical evidence of past events. She has studied archaeological sites in Greece and is currently working on her Masters degree. Before beginning work at the Waitangi Tribunal she was a contract historical researcher.

New Librarian

Rachel Kerr has joined the Waitangi Tribunal as librarian. She was formerly a librarian at TVNZ, working for three years as a news video researcher.

Rachel has a Bachelor in Fine Arts degree in film from Canterbury and a Masters degree in library and information systems from Victoria.

Her job is to respond to information requests and to maintain and develop the Waitangi Tribunal library facilities.

Rachel says she is enjoying working alongside the team at the Waitangi Tribunal.

Rachel Kerr

New Assistant Registrar

Jacqui Lethbridge joined the Waitangi Tribunal in mid-June as assistant registrar. In the short time she has been at the Tribunal she has already proven to be a major asset to the Tribunal registrarial office.

Jacqui is in her fifth year of university study at Victoria University. She has completed a Bachelor of Arts majoring in political science and history and is in the final stages of completing her law degree.

Jacqui says that she is excited and inspired by her position at the Tribunal. She believes that her diverse range of experience and skills will assist the Waitangi Tribunal as it gears up for a new focus aimed at bettering the process for all stakeholders.

Jacqui Lethbridge

HE KAIAKO HOU

Kua tīmata ā **Annissa Gotty** hei kaiako i te reo Māori. No ngā kāwai rangatirā ā Annissa o Ngāti Tūwharetoa me Ngāti Raukawa. Kua riro i a ia te tūnga i wātea i a Niwa Short.

He rawe Annissa mō ngā waiata-ā-ringa. I mahi Annissa i roto o te kōhanga reo me ngā kura reo rua i mua. Kei i a ia anō ngā tohu mō te kaiako.

Kei te koa katoa ngā kaimahi o te tari kua whiwhi kaiako hou te Taraipiunara ō Waitangi.

Annissa Gotty

Wairarapa Inquiry District Extended

The Waitangi Tribunal has decided to extend the Wairarapa inquiry to include the Tararua district. This larger inquiry is called the Wairarapa ki Tararua inquiry. The inquiry stretches from Cape Palliser to Norsewood (just north of Dannevirke). There are 20 claims tentatively grouped for hearing within this district. A new indicative timetable for the Wairarapa ki Tararua inquiry has been developed. This timetable establishes a new casebook deadline for all research in June 2002. In addition, no new claims for the Wairarapa ki Tararua inquiry will be accepted after June 2002.

After the casebook has been finalised, the inquiry will proceed into an interlocutory process between August 2002 and April 2003. This process will involve the filing of final amended statements of claims, the Crown's statement of response, and the Tribunal's statement of issues. It is envisaged that hearings will begin in May 2003.

The Waitangi Tribunal's claims administration officer for this enquiry is Midge Te Kani. The research officer is Robert McClean.

POROPOROAKI

Kua hinga te kuia whakamutunga o Ngāti Mauku-Ngāti Tahinga me Ngāti Kauwae, ā Te Aho Kapea. E whitu tekau mā toru ōna tau ka hinga nei. Ko ēnei hapū kei Oruawharo.

I hinga te kuia nei i te hui o te Rūnanga Whakamana i Te Tiriti o Waitangi mō Te Kaipara i te marama o Hepetema kua taha ake nei.

Ko te tono o Ngāti Mauku-Ngāti Tahinga me Ngāti Kauwae, i hē te whakauru o te Karauna i ā rātou ki roto i te kaupapa mō Te Uri o Hou.

Te Aho Kapea

Ko tā Ngāti Mauku-Ngāti Tahinga me Ngāti Kauwae, he mana anō tō rātou, e rerekē ana ki tō Te Uri o Hau o Te Kaipara.

Ko te mate o te kuia nei te mate tuatahi kia tau ki runga i ngā hui whakawā o Te Rūnanga Whakamana i te Tiriti o Waitangi.

'Whatungarongaro te tangata

Toitū te whenua.'

Waitangi Tribunal

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