Waitangi Tribunal

Te Rōpū Whakamana i te Tiriti o Waitangi

Te Manutukutuku

Paenga-Whāwhā 2002 | 55 | April 2002

'He toka tū moana he ākinga nō ngā tai ...'

Bishop Manuhuia Bennett, Taihakurei Durie and Māori Affairs Minister, Parekura Horomia at the 25th Anniversary of the Waitangi Tribunal October 2000

Kua hinga te toka tū moana o te Rūnanga Whakamana i Te Tiriti o Waitangi, te āpiha a te Atua, a Manuhuia Augustus Tutewehiwehi Bennett, ONZ, CMG, DD, LTh, BSc, Hon PhD, nō roto o Te Arawa.

The Waitangi Tribunal wishes to acknowledge the passing of Manuhuia Bennett, the senior member of the Waitangi Tribunal. Manuhuia was born in Rotorua on February 10, 1916 and passed away on 20 December 2001, aged 85.

Manuhuia spent his early childhood at Kohupātiki in Ngāti Kahungunu. He attended the mission school at Ōtaki, and later Te Aute College, Victoria and Hawaii universities.

One of 17 children, his was a family of achievers. Among his brothers were Sir John Bennett, father of the Te Kōhanga Reo movement; Sir Charles Bennett, commander of the Māori Battalion and an overseas consul; and Henare Bennett, the first Māori psychiatrist. His father, Frederick Augustus Bennett, was the Bishop of Aotearoa from 1928 to 1950. Manuhuia elected to follow in his father's footsteps as a clergyman.

Manuhuia was of the old school of Māori clergy that included people like Wī Te Tau Huata, Herepo Harawira, Gordon Kaa, Tā Kingi Ihaka and Māori Marsden, among others. Manuhuia was chaplain to Māori servicemen during the Second World War. As such he served in Egypt and Italy. One of his tasks was to assist in the burial of young soldiers.

'There were Māori and Pākehā and German, all about 21 to 30 years of age, fit as could be, but each with a hole in their head or their heart. I couldn't find any justification for people arguing with each other over politics and paying for their argument with this.'

From 1968 to 1981, he served as Bishop of Aotearoa. Outspoken on subjects he was passionate about, in 1979 he proclaimed a rāhui or ban on illegal drugs. He was also a strong opponent of abortion. 'I believe the unborn child has more rights than a woman because I believe most in the right of a species to survive,' he once said.

Manuhuia made a big impact both as a clergyman and in his post-retirement career as a Waitangi Tribunal member. Appointed in 1986, he served on the Muriwhenua, Wellington Tenths, Taranaki, and Te Whanganui-a-Orotu Tribunals.

As a member of the Waitangi Tribunal he believed in the importance of Waitangi

Continued on page 2

Editorial

Engā reo, e ngā mana, e ngā huihuinga tāngata, tēnā koutou, tēnā koutou, tēnā tātou katoa. Ki ngā tini mate kua wehe ki te pō, tae atu ki te Pīhopa Māori, Manuhuia Augustus Tutewehiwehi Bennett, otirā rātou kua tae ki tua o te ārai, haere koutou, haere, haere, haere. Kia hoki mai ki a tātou te hunga ora, tēnā koutou, tēnā koutou, tēnā tātou katoa.

It is indeed an honour to be writing this editorial for this edition of Te Manutukutuku because, among other matters, it celebrates the work of one of New Zealand's most respected kaumātua, Bishop Manuhuia Bennett.

I was recently appointed Presiding Officer for the Central North Island Inquiry (CNI). I share the privilege of hearing the claims in the CNI with experienced and distinguished Tribunal members Joanne Morris, Professor Keith Sorrenson and John Clarke. Due to its size, tribal and hapū diversity, and the volume of claims, the CNI area has been divided into three districts: Rotorua, Taupo and Kaingaroa. Bishop Bennett was one of the principal claimants for Rotorua within the cluster known as the Volcanic Interior Plateau (VIP). He was there until the end, serving his people – a life's work that I am sure will continue.

Judge Caren Wickliffe

I recently attended a Judicial Education Intensive Seminar for the Māori Land Court judges in Wellington. The purpose of the training was to improve our knowledge of alternative dispute resolution (ADR) techniques. I was keen to take part in this session because of the increasing relevance of ADR in our work, particularly where there are multi-party disputes.

The Rotorua Tribunal, for example, is now faced with the responsibility of dealing with approximately 70 claimant groups in the Rotorua District alone. In terms of volume, this is an exceptionally high number. For that reason we need to work on novel approaches to bring the claims to hearing, and expediting the hearing process itself. The new procedures (New Approach) discussed in previous issues of *Te Manutukutuku*, being pioneered by Acting Chairperson Chief Judge Joe Williams in the Gisborne District Inquiry will, of course, go a long way to facilitating the work of the CNI Tribunal. But how the Waitangi Tribunal should deal with issues of mandate and representation of claimants in areas with 70 or more claims is relatively uncharted territory.

For that reason, the Waitangi Tribunal has, for the first time, prepared a questionnaire for claimants who wish to have their claims fully or partially heard by the CNI Tribunal. We want claimants to identify whom they represent, and if they represent a whānau, hapū or iwi, or other group, and their mandate to bring the claim. This questionnaire is explained in more detail in this issue of *Te Manutukutuku.*

By undertaking this approach, we hope that most mandating and funding issues can be removed from the agenda before we address the complex task of completing the research casebook for the Rotorua district.

So all those in other districts, watch this space! There are bound to be lessons (all good, we hope) from the CNI experience.

Hei konei rā

Caren Wickcliffe
Māori Land Court Judge and Presiding Officer for the Central North Island Inquiry (CNI)

Continued from page 1

Day. To him it was the day that represented 'the most important event in New Zealand's history.'

The Acting Chairperson of the Waitangi Tribunal and Chief Judge of the Māori Land Court, Joe Williams, paid him this tribute:

'Manuhuia's contribution to the ideal of harmony between Māori and Pākehā in this country is unequalled. He was humble, wise, astute, and above all, a principled man. I have valued his advice and guidance over many years and will miss it greatly now.'

In 1989, Manuhuia was awarded the Order of New Zealand, limited to only 20 living people – for services to the church and to his people. 'He was a man of great intelligence, wisdom, generosity and compassion,' said Prime Minister Helen Clark.

Moe mai e tō mātou matua. Kua okioki koe i ō mahi katoa. Moe mai e te pononga o te Atua, moe mai, moe mai i roto i te Ariki.

Claimant Survey in Central North Island

The Waitangi Tribunal has for the first time prepared a survey for distribution to claimants who expect to be heard by the Rotorua Tribunal.

The survey will clarify whom groups represent and whether they have a mandate to do so.

The aim of the survey is to help reduce conflicts between overlapping claimant groups and clarify mandating and funding issues before moving into the hearing stage. The survey is in the form of a questionnaire, which has six key points:

1. details of the claim, contact numbers, and legal representation;
2. a description of the claimant group and the number of people in it;
3. how the claimants' representatives are elected, who they are, and the names of spokespeople;
4. where the claimant group holds mana whenua, the marae it identifies with, and the land or resource that is being claimed;
5. details of any cluster or collective with which the claimant is associated or may be willing to join;
6. in which district the claim belongs and is desired to be heard.

Kaumātua at the Central North Island hearing at Rotorua.

The results of the questionnaire will be put on the Tribunal's public record, which is accessible to all parties. The Tribunal's staff will analyse this information and produce a report. Findings from the questionnaires will be distributed before the next judicial conference in late June in Rotorua.

First Judicial Conference for Te Urewera

The first judicial conference for the Te Urewera Inquiry Hearing District was held at Ruātoki on 26-27 March. A further judicial conference was held on 22 April 2002.

Under the Tribunal's New Approach to hearing claims, the kaupapa of these conferences is to prepare all parties and the Tribunal for the hearings, by:

- identifying the parties in the inquiry;
- confirming the district hearing boundaries;
- clarifying representation and mandate and funding issues;
- confirming legal representation;
- confirming claim cut-off dates;
- checking research progress and confirming casebook deadline and inquiry timetabling.

Anita Miles, Tama Nikora and Heidi Hohua.

In terms of research, the Tribunal's goals include ensuring that all claims issues have been covered in the research programme, setting up any remaining research projects, and avoiding duplication of research. The research will be compiled into a casebook to be issued to all claimants and the Crown.

Continued over

As part of the interlocutory conferencing process, claimants will be asked to particularise their statements of claim. This means detailing all of the specific issues being brought before the Tribunal. Following this, the Crown will make a statement of response to the claim issues identified by the claimants. The Tribunal will then compile a statement of issues identifying the live issues between the claimants and the Crown which will be heard in the Te Urewera Inquiry.

The announcement of the first Judicial Conference for Te Urewera is a culmination of five or six years planning and research. There are 22 claims, in part or whole, in the Te Urewera District.

UREWERA TRIBUNAL APPOINTED

A Tribunal has been appointed to hear the claims in the Te Urewera district. They are Judge Patrick Savage, Dr Ann Parsonson, Ms Joanne Morris and Mr Rangitihi Tahupārae.

Judge Patrick Savage (Te Whānau a Ruataupare) has been a judge of the Māori Land Court since 1995. He has previously presided over the Waitangi Tribunal hearings for the kiwifruit export and the radio spectrum claims.

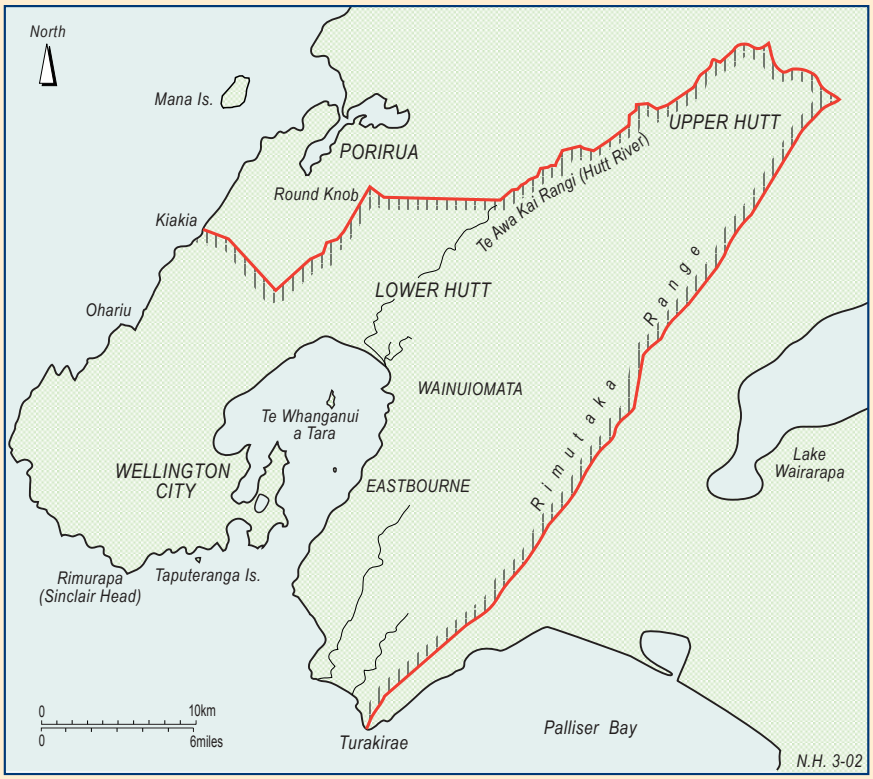
Joanne Morris was a commissioner at the NZ Law Commission from 1994-99. She has been a senior lecturer in law at Victoria University. She presided over the Waitangi Tribunal hearing into the Tarawera Forest.

Rangitihi Tahupārae is a tohunga of Whanganui iwi. He has an extensive background in broadcasting.

Dr Ann Parsonson is a senior lecturer in history at the University of Canterbury. She has specialised in Māori history and she has been a researcher and writer in a number of Māori claims to the Tribunal. She is also a member of the Tribunal panel in the Gisborne hearings.

Wellington Tenths Report Expected

Wellington inquiry district boundary



AMENDMENT TO THE *TREATY OF WAITANGI ACT 1975*

The Minister of Māori Affairs Hon Parekura Horomia tabled in Parliament a set of minor amendments to the Treaty of Waitangi Act through the *Māori Purposes Bill 2002*.

Previously, Tribunals have substituted members in order to sit with a quorum. The changes provide for the temporary replacement of a member or a presiding officer in the case of illness or unforeseen circumstances for all or part of a sitting. Consequently, scheduled sittings will run to programme.

It recognises that inquiries are often many years in duration and the circumstances of members change over time.

Under certain conditions and provided there is an adequate record of the inquiry, the Chairperson may appoint a replacement presiding officer or Tribunal member. This amendment will assist older inquiries that have continued on for many years or may have been referred back to the Tribunal for remedies hearings, for example.

The Bill ensures Tribunals working on the Hauraki Inquiry (Wai 686), the Kaipara Inquiry (Wai 674), and the Wellington Tenths Inquiry (Wai 145) can complete their work and report to the Minister and the claimants.

The Bill will be referred to the Māori Affairs Select Committee. ●

The report of the Wellington Tenths Tribunal on claims in the Wellington region is expected to be released in the next few months.

This inquiry began with claims by the Wellington Tenths Trust, representing predominantly Te Atiawa beneficiaries of 'tenths' reserves in Wellington originally created by the New Zealand Company. However, as the inquiry proceeded, the focus was broadened to incorporate issues beyond those relating to tenths reserves. As a consequence, it became a regional inquiry covering the whole of the 'Port Nicholson block': the area which the New Zealand Company claimed to have purchased from Māori in 1839 (see map). This meant that, in addition to the claims of the Wellington Tenths Trust, the Tribunal also heard claims brought on behalf of Muaupoko, Ngāti Mutunga, Ngāti Rangatahi, Ngāti Tama, Ngāti Toa, and Rangitāne.

The first hearing for this inquiry was held in 1991, but due to various delays, hearings did not finish until 1999. In that time, the membership of the Wellington Tenths Tribunal changed somewhat; from late 1997 the Tribunal consisted of Professor Gordon Orr (presiding), the late Bishop Manuhuia Bennett, John Clarke, and Professor Keith Sorrenson.

The report will examine the complex process by which the New Zealand Company acquired title to the Port Nicholson block. Although the company claimed that it had bought the block from Māori in 1839, this transaction had no legal standing unless validated by a Crown grant. Claimants have alleged that, at various steps along the way to the issuing of a Crown grant for the whole block to the company in 1848, the Crown breached the Treaty by failing to protect their interests in land within the block. Another key issue in the report is the administration and alienation of the tenths reserves which were set aside for Māori in the town of Wellington and in the country districts. These reserves were called 'tenths' because one section in every ten was supposed to be reserved for Wellington Māori.

The report also deals with the conflict over land in Heretaunga (the Hutt Valley) which led to the outbreak of warfare in 1846; with the proclamation of public reserves (including the town belt surrounding the city of Wellington) by the Crown; and with issues relating to Wellington Harbour, and reclamation around the foreshores of the harbour. In addition to its primary purpose of reporting on claims of Treaty breaches, the report should be of considerable interest to Wellingtonians, as it contains a great deal of historical information about their city and surrounding district. ●

Joe Pere of Te Whānau a Wi Pere. His tupuna Wi Pere is in the background.

New Approach Aids Gisborne District Inquiry

The Tribunal's use of the New Approach procedure in the Gisborne District Inquiry has completed five weeks of claimant evidence and a week of Crown evidence. Hearings have taken place at a rate of one a month. All hearings, including two weeks of Crown evidence and one week for closings, will be completed by the end of June 2002.

Starting with a pōwhiri at Whakatō marae on 18 November 2001, the Tribunal held a joint week of claimant evidence. This evidence was principally focussed on the period of armed conflict between Māori of Turanganui a Kiwa and the Crown

Continued over

(1865-73). The Tribunal heard joint legal submissions and a brief statement from a representative from each claimant group. Four key historical witnesses then appeared for the claimants: Vincent O'Malley, Bruce Stirling, Professor Judith Binney, and Dr Brad Coombes.

The hearing of individual claimant groups started with Te Aitanga a Māhaki in December 2001, at Mangatū Blocks Office in Gisborne. In January, Te Whānau a Wi Pere and Te Whānau a Kai were heard at Rongopai Marae and Ngariki Kaipūtahi appeared at Mangatū Marae. Rongowhakaata and Ngā Uri o Te Kooti were heard in February at Manutuke Marae. Sue Nikora, Robert Cookson and Ngāi Tāmanuhiri were heard in the last claimant week in 2-6 April at Muriwai Marae.

A total of 41 tangata whenua witnesses gave evidence. All tangata whenua witnesses were briefed by their counsel, speaking to or reading from prepared statements. The standard of preparation and presentation was high. Eighteen professional witnesses such as historians also appeared, although the number of actual reports heard was higher.

The Crown completed a week of evidence, from 15-19 April 2002, filing a large number of reports. Additional weeks of Crown evidence will take place on 21-23 May and 27-30 May. Closing submissions from both claimants and the Crown will now be held in the week of 24-28 June.

One innovation during the New Approach hearings in Gisborne was the use of the Tribunal's statement of issues. The statement of issues contains a list of questions for the inquiry to answer. For Gisborne it is divided into 30 sections, such as the removal of prisoners to the Chatham Islands, or joint tenancy, or Native Land Court (Crown purchasing). The questions in the statement were formulated during the judicial conferences and prior to the outset of hearings. They represent a bringing together of matters raised in the claimants' statements of claim and the Crown's statement of response.

Claimant and Crown witnesses write summaries that answer questions from the statement of issues. This has given quite a different look to the summaries of expert witnesses. Normally they summarise their reports, but now they bring greater focus to the issues in the inquiry, and to the claimants' case, by answering questions where possible.

Furthermore, the Gisborne Tribunal has introduced a step of written questions for clarification. These are questions that a party may wish to ask a witness when they are unsure as to what was meant in their summary or report. The witness is given two weeks prior to the hearing to work on their answers. The questions of clarification reduce the amount of time spent in cross-examination. ●

Whanganui inquiry

The Waitangi Tribunal is at the beginning stages of an inquiry into Whanganui claims.

Claims to the Whanganui River were heard and reported on in the Whanganui River Inquiry (Wai 167). The latest Inquiry (Wai 903) will cover claims for all other issues in the Whanganui area. The boundaries of this Inquiry will be discussed with claimants and the Crown and then finalised by the Tribunal. An initial proposed boundary (pictured) has been sent to all claimants for feedback.

Whanganui claimants have agreed to the Tribunal's new approach, divided into three stages. Firstly, it is necessary to define the inquiry boundary. The second priority deals with representation and grouping of claims. Thirdly, the Tribunal and all claimants must agree on a research plan that will cover the issues for all claims. Once the research plan is finalised, the next stage of the process begins to complete each of the research reports.

FIRST CONFERENCE

On 18 October 2001, the Tribunal held the first conference of Whanganui claimants and the Crown. Presiding Officer Judge Carrie Wainwright and Tribunal member Professor Wharehuia Milroy were both at the conference. Claimants were asked to identify the group they represented and the Tribunal also asked claimants how much research they had completed.

Hui have since been held with claimants in Raetihi, Whanganui and Ohakune. The main purpose was for claimants to talk about overlaps between claims and work together on common issues. The hui also discussed the Tribunal's approach in more detail, as well as how to obtain funding from Crown Forest Rental Trust (CFRT) and legal aid.

SECOND CONFERENCE

The second Whanganui conference was held on 4 March 2002 in Whanganui. The focus was to hear about claimants' progress in sorting out

Wairarapa Update

The majority of the Wairarapa ki Tararua research has been completed and research on the Tararua area is underway. Most research reports for Wairarapa were filed at the end of March. All reports are now due to be filed by 20 December 2002, in time for the casebook deadline.

Once the casebook has been completed, the inquiry will move into active conferencing. The Crown will respond to final statements of claim prepared by claimants. After conferring with the parties, the Tribunal will then draw up a statement of issues for adoption into the framework for hearing the claims in the regional inquiry.

The Crown Forestry Rental Trust (CFRT) and the Waitangi Tribunal hosted a research hui in Masterton on 7-8 February 2002. About 60 people attended, the majority of which were claimant groups. Researchers presented their completed research reports to claimants and provided an opportunity for claimants to give comment. Tribunal staff also received a number of written suggestions for further research and are working with CFRT to address these requests.

A Judicial Conference was held on 21 March in Masterton to assess progress in the inquiry and to prepare for completion of the casebook of research evidence. At the conference the current state of progress with historical research was discussed. Key issues included claimant proposals for supplementary research and the timeframe for filing of reports. Also discussed were the grouping of claims and the proposed timetable as set out in the latest direction for the interlocutory conferences leading up to the start of the hearings.

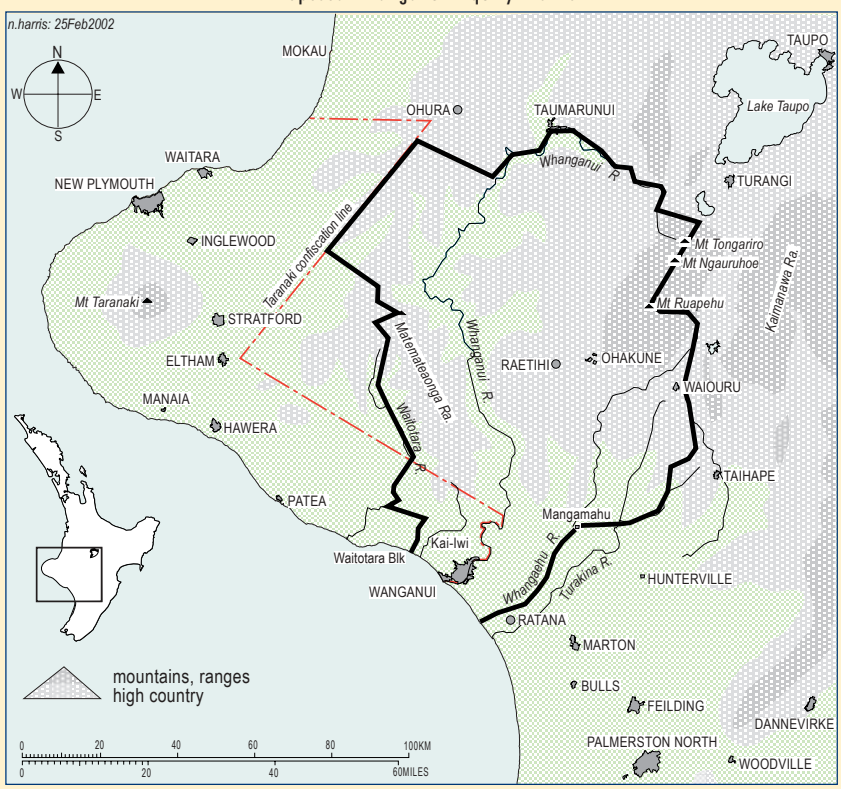
Takirirangi Smith after delivering a research report.

representation issues. There was also discussion about the inquiry boundary and preliminary research planning.

RESEARCH PLANNING

To help begin the discussion about research needs, Dr Grant Phillipson of the Waitangi Tribunal has examined all research currently held by the Tribunal and prepared a proposed research programme for consultation. This document has been sent to all claimants. A copy of the Whanganui discussion paper and/or the proposed inquiry boundary map is available upon request from the Waitangi Tribunal.

Proposed Whanganui Inquiry District



The Tribunal's Programme

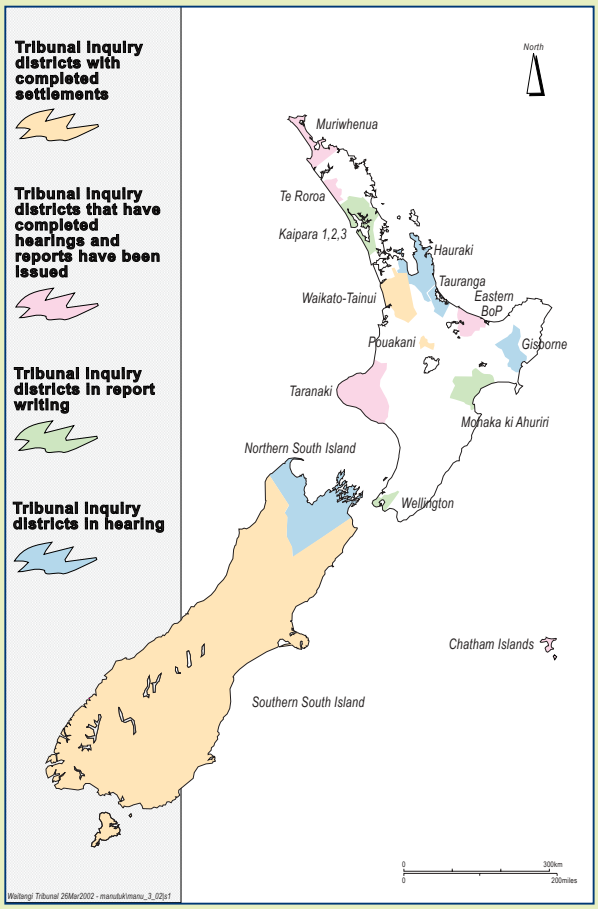
The Acting Chairperson of the Tribunal, Chief Judge Joe Williams set the Tribunal's forward programme for the next ten years. Each district named in the programme should have a casebook of evidence ready by the end of the financial year.

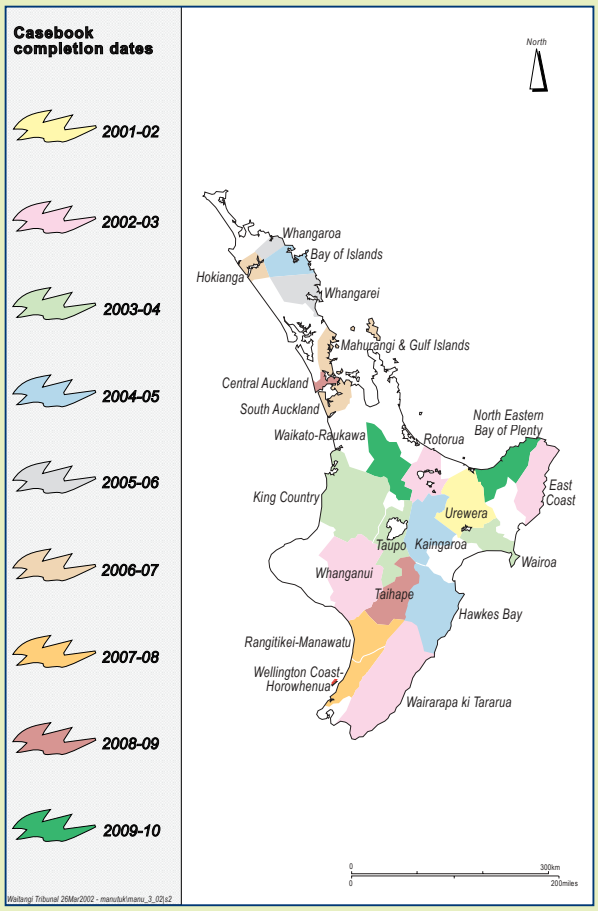
The order of priorities is set according to claimants' readiness to proceed and the amount of research completed or already underway. The Tribunal also considers the Crown's preference to deal with raupatu claims, and the earliness or lateness of major land loss in the different districts. The order is fairly fixed for the first three years, but fluid thereafter and subject to change.

Claimants in the districts at the front of the queue should be ensuring that they have representation issues sorted out, that all research will be completed by the due date, and that they are getting ready for hearing and settlement. Claimants towards the end of the queue should scope their research needs, interview kaumātua, identify all relevant grievances, and establish plans for hearing and settlement. These claimants should use the opportunity as time for more intensive work on the earlier stages of getting ready for hearing.

The district casebooks should be ready in the following order:

By 30 June 2002	Te Urewera
By 20 December 2002	Wairarapa ki Tararua
By 30 June 2003	Whanganui, East Coast, Rotorua
By 30 June 2004	Taupo, Wairoa, King Country
By 30 June 2005	Kaingaroa, Hawkes Bay, Bay of Islands
By 30 June 2006	Whangaroa, Whangarei
By 30 June 2007	Hokianga, South Auckland, Mahurangi & Gulf Islands
By 30 June 2008	Rangitikei-Manawatu, Wellington Coast
By 30 June 2009	Taihape, Central Auckland
By 30 June 2010	North-Eastern Bay of Plenty, Waikato Raukawa





Waitangi Tribunal

Te Manutukutuku is published by the Waitangi Tribunal, PO Box 5022,Wellington • Telephone 04 914 3000 • Fax 04 914 3001
ISSN 0114-717X • e-mail: tribunal@courts.co.nz • All Te Manutukutuku can be accessed from http://www.waitangi-tribunal.govt.nz
Production by Huia Communications, Wellington