
CROWN POLICY AFFECTING
MAORI KNOWLEDGE SYSTEMS
AND CULTURAL PRACTICES

David Williams

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INTRODUCTION

My full name is David Vernon Williams. I am an independent researcher residing at 'Bag End', 1239 Ahuroa Road, RD 1, Warkworth. My formal tertiary education qualifications include undergraduate degrees in history and in law (BA/LLB) from Victoria University of Wellington; a graduate degree in law (BCL) from Oxford University, England, where I was a Rhodes Scholar; a doctoral research qualification from the University of Dar es Salaam, Tanzania (Ph D) that included an analysis of colonial legal history in New Zealand; and a diploma in theology from Oxford University (Dip Theol). I am a barrister and solicitor of the High Court of New Zealand and I hold a practising certificate to act as a barrister. I was employed as a legal academic at universities in England, Tanzania, and New Zealand from 1971 to 1991, and during that time I wrote numerous published articles and book chapters on issues related to colonial law, indigenous law and the Treaty of Waitangi. From 1992 to 2000, my primary occupation was as a consultant contracted to research on law in history and on Treaty of Waitangi related legal issues. I have acted in a variety of capacities in contracts with the Crown Forestry Rental Trust, the Law Commission, and Te Puni Kokiri. I was responsible for the *Maori Land Legislation Manual (and Database)* which was published in two volumes by the Crown Forestry Rental Trust in 1994 and 1995. I am the author of 'Te Kooti Tango Whenua': *The Native Land Court, 1864-1909* published by Huia Publishers in 1999. I have acted as an arbitrator in respect of Maori-owned forestry land. I am the honorary legal adviser to Te Pihopatanga o Aotearoa (Anglican Church) and a member of the Anglican Church's General Synod/Te Hinota Whanui. In 2001, I was appointed an associate professor in law at the University of Auckland.

I have had extensive experience of Waitangi Tribunal hearings from attendance at the first hearing (Wai 1) in 1977 to the present. I have acted as an honorary legal adviser to claimants prior to the availability of legal aid (Wai 8, Wai 9, Wai 38); as an expert witness presenting written and/or oral evidence in several hearings during the first decade of the Tribunal's jurisdiction (Wai 6, Wai 8, Wai 9, Wai 10, Wai 11); as a researcher assisting claimants and giving evidence at hearings held since 1985 (Wai 9, Wai 38, Wai 100); and in providing assistance to Tribunal members (Wai 304, Wai 46). I am currently a researcher or adviser for several claimant groups engaged in or preparing for Tribunal hearings and/or direct negotiations with the Crown (Wai 100, Wai 388, Wai 723). At a number of hui

convened by the Crown Forestry Rental Trust I have offered general advice to national and district wide groupings of claimants preparing for Tribunal hearings. I have also acted as a barrister, appearing before the Waitangi Tribunal as senior counsel for Te Uri o Hau claimants (Wai 271 and Wai 229) in the Kaipara district hearings and in subsequent settlement negotiations with the Office of Treaty Settlements.

My direct involvement in the Wai 262 claim inquiry began with the preparation of a report authorised by a direction from the Waitangi Tribunal dated 31 May 1996 to commission G Rudland of Wellington, solicitor.¹ In compliance with that commission, I wrote a report entitled ‘Matauranga Maori and Taonga: The Nature and Extent of Treaty Rights held by Iwi and Hapu in Indigenous Flora and Fauna, Cultural Heritage Objects, Valued Traditional Knowledge’. This was filed in February 1997 in the record of documents, along with supporting documents and index.² A summary of that report was prepared for an oral presentation to the Tribunal during the Ngati Wai hearings held at Whangarei in September 1997.³

The present report was initially authorised by the presiding officer in a direction commissioning research dated 10 December 1998.⁴ The commission required research into four topics of relevance to the Tribunal’s inquiry in the following terms:

- ▶ Crown policy regarding Maori historical and contemporary knowledge systems;
- ▶ Crown actions or inactions which affected Maori cultural or knowledge systems, and Maori responses to them;
- ▶ Crown policies with regard to Maori cultural practices, especially tohunga, rongoa, education, the suppression of religious customs, and Te Reo Maori; and
- ▶ any other Crown actions or inactions which may be of relevance to the claim.

In February 1999, I filed a scoping report outlining the parameters for carrying out research relevant to the topics identified by the research commission.⁵

The terms and conditions of the research commission contract offered to me provided for the understanding that I would remain responsible for the research but that I would assign duties to a research assistant, Nicola Blackburn. Nicola Blackburn has Te Arawa and Ngati Kahu affiliations. She has a BA, a BA (Hons) (first class), and an MA in history from Massey

1. Wai 262 record of inquiry, commissions 3.2, 3.3

2. Wai 262 record of inquiry, doc A15(a)–(j)

3. Wai 262 record of inquiry, doc A24

4. Wai 262 record of inquiry, commission 3.11

5. Wai 262 record of inquiry, doc G3

University. Her master's thesis completed in 1997 was entitled 'The Administration of Native Affairs by the Liberal Government, 1893–1906'. Her thesis supervisors were Dr D Keenan and Dr H Riseborough. During this commission, she was responsible for all the basic research into archival materials. She conducted a search for relevant primary published materials and a selection of secondary published sources. She provided me with an analysis of the more significant publications. The document bank attached to this report is drawn from her work. I am most grateful to Ms Blackburn for her dedicated and thorough research to provide me with the substratum of historical data upon which this report is based. I am entirely responsible for any errors and omissions in the writing up of the research.

Towards the end of the research for this commission it was apparent that the older log books of native schools held by National Archives in its Auckland regional collection should be thoroughly scrutinised. I was particularly pleased that Tribunal staff secured the services of an experienced researcher, Dr Ian Brailsford, to peruse these log books. He was asked to seek for information on a number of matters including, in particular, information on corporal punishment inflicted by teachers. I have drawn upon his report in chapter 4 and his full report will be included as an appendix to this report.

Unlike other research commissioned by the Tribunal for this inquiry, the topics I have been asked to discuss are not limited to a particular historical period. In terms of the Tribunal's jurisdiction, therefore, I am required to attempt to portray the main features of Crown policy from the outset of colonial rule in 1840. The Wai 262 claim is both historical and contemporary. The definition in current Crown policy of 'historical claims' as claims relating to acts and omissions before 21 September 1992 seems not to be relevant to this inquiry. This report is thus an historical report covering the entire period from 1840 to 2000.

The topics identified for research by paragraphs (a)–(c) of the commission necessarily cover a wide range of Crown policies that affect or have affected *mātauranga Māori*. In case the scope of the research was not broad enough to include important issues uncovered in the course of the research, item (d) of the commission encompasses 'Any other Crown actions or inaction's which may be of relevance to the claim'. If this report was to be of any value to the Tribunal, it was evident that I would have to be selective in the topics to be covered and the detail with which they

would be discussed. The scoping report helped to identify some of the most important areas to be researched. Tribunal staff provided some input when research difficulties arose. Ms Blackburn also received some assistance from other researchers commissioned by the Tribunal whose work sometimes unearthed material relevant to this report. At the end of the day, however, the report cannot hope to be more than an introduction to historical themes and tendencies in Crown policies that have significantly affected matauranga Maori.

This report was commissioned directly by the Tribunal itself. I understand that this was done with the agreement, but not necessarily the endorsement, of either the claimants or the Crown. It seemed important in these circumstances that I should carry out the research under the direction of Tribunal staff but without reference to any of the claimants, or to the Crown or to any of their respective counsel. It is not possible, in my view, to conduct any historical research without being aware of the potential for bias and subjectivity. Nevertheless, this report is the result of independent research. The Tribunal procedures appropriate for scrutiny of this report may differ, therefore, from the as yet incomplete consideration by the Tribunal of my earlier report.⁶ That report was prepared in consultation with the claimant Hema Nui a Tawhaki Witana (Dell Wihongi), along with the counsel and solicitors then representing all the claimants. It was presented during a hearing by the Tribunal of evidence put forward by Ngati Wai claimants.

In order to arrange our research material, Ms Blackburn and I defined a number of subject categories. They were as follows:

- ▶ general government policy;
- ▶ health;
- ▶ education;
- ▶ tohunga;
- ▶ rongoa;
- ▶ cultural knowledge;
- ▶ customs; and
- ▶ te reo Maori.

For each category, there is a collection of information derived from archival sources, from primary published sources and from secondary sources. These categories were not intended to be discrete and unconnected topics, nor could they be. Native school teachers were often required to be the dispensers of primary health care not only to pupils but

6. Wai 262 record of inquiry, doc
A15

also to their families. The decision to teach only English language in schools and to prohibit the use of Maori language during school hours was not merely an education policy. It had an enormous impact on cultural practices and knowledge systems and indeed on the very survival of te reo Maori as a spoken language. The suppression of tohunga and the loss of knowledge about rongoa were intimately connected to Crown policies on health services for Maori. The material collected in the cultural knowledge category shows the willingness of the Government to pay Pakeha ethnographers and artists to collect and preserve the intellectual and artistic achievements of the Maori race 'before they are lost'. Yet at the same time Crown policies firmly rejected transmission of Maori cultural knowledge as being in any way relevant to the education of Maori. The suppression or discouragement of Maori customs of adoption and the holding of tangihanga were both justified on health policy grounds. And so on. The categories were used merely as a convenient means to gather the data together.

In an attempt to present the extensive range of material in a coherent manner, I focused first on general government policy with a chronological overview. A substantial part of this report in chapters 2 and 3 deal with the general lines of government policy that might be relevant to the issues of this commission. The meaning and purpose of changing official policies on amalgamation of the races, on assimilation of Maori, on promoting adaptation of Maori to modern ways of life, on relocation and integration, through to biculturalism and recognition of the principles of the Treaty of Waitangi will be discussed. In those chapters I give particular attention to the two sets of policies that had the greatest impact on matauranga Maori – health and education. The essential point of these two chapters is that Crown actions and omissions in relation to Maori knowledge systems have to be understood in the wider context of the Crown's general race relations policies. Chapter 2 deals with the earlier period up to about 1930 when government policy emphasised amalgamation of the races and policies designed to achieve assimilation of Maori into the norms of the dominant culture. Chapter 3 covers the period from 1930. Many policies continued to be assimilative in their effects but the terminology changed to speak of adaptation and then integration. In my concluding remarks I emphasise that the period of the late 1940s to early 1970s, when the focus of government policies was on integration, was crucial in many respects. In that era the drastic decline of Maori language and other aspects of

Maori cultural knowledge became readily apparent. If policies of active protection had been implemented at that time then the prospects for cultural revitalisation may have been easier to achieve. It was not to be until the last quarter of the twentieth century that policies moved slowly towards biculturalism and the protection of taonga as an aspect of honouring the Treaty of Waitangi. In chapter 4, I make a more detailed study of education and other policies that had an impact upon te reo Maori. The conflicting evidence on corporal punishment being inflicted for speaking Maori in the classrooms and playgrounds of Native schools is considered. This chapter relates almost exclusively to education systems administered by central government departments. It is their archival material that the researcher perused. I am aware that there is the need for further research to be undertaken if one wishes for a study of the role of tertiary institutions in preserving and promoting education relevant to Maori cultural knowledge systems. There are a few references to the activities of Professors Piddington and Biggs, but there is no consideration of the work of the Maori studies departments in universities from the 1950s. Nor is there any mention of the work of the Maori tertiary institutions established in recent years, especially those formally recognised and funded as *whare wananga*. This is a significant gap in this research report that the Tribunal needs to be aware of. Chapter 5 draws together a number of examples of Maori cultural practices being affected by Crown policies. The *tohunga* suppression laws affected the various roles of *tohunga* either directly or indirectly. This is the main focus of the chapter. Brief consideration is given to a number of other issues such as the preservation of antiquities, the publication of ethnographical material written by Elsdon Best and others employed in government service, and the creation of institutes to promote Maori arts and crafts. Brief mention is also made of Crown policies affecting *tangihanga* and adoption. These last topics are mentioned only to draw attention to the fact that some Maori cultural practices such as *tangihanga* at the time of death and *whangai* relationships as an alternative to adoption have survived as important features of Maori society, regardless of attempts to proscribe them or undermine them. Others with an expertise that I do not have may be able to account for the resilience of some Maori cultural practices even when policies of assimilation and integration have sought actively to displace Maori values and to marginalise Maori cultural knowledge systems. Chapter 6 contains some comments by way of an overview to complete the report. These comments are

Introduction

intended to draw attention to a few of the more striking aspects of the history of Crown policy and Maori responses canvassed in the body of the report.

The report generally gives greater weight to evidence gleaned by Ms Blackburn from archival sources rather than insights more readily available from published sources. In order to limit the report to manageable proportions, some of the published sources are merely referred to rather than discussed in any detail. The bibliography sets out the published sources perused by Ms Blackburn in the course of her research.

