

The Honourable Parekura Horomia
Minister of Māori Affairs



The Waitangi Tribunal
110 Featherston Street
WELLINGTON

and

The Honourable Peter Hodgson
Minister Coordinating SILNA Policy
Parliament Buildings
WELLINGTON

5 May 2005

E ngā Minita o te Karauna, tēnā korua

Enclosed is our report entitled The Waimumu Trust (SILNA) Report. The claimants are the beneficiaries of the Waimumu Trust, which administers an area of 4440 hectares of indigenous forested land in central Southland, granted to their ancestors under the South Island Landless Natives Act 1906 (SILNA). The claim relates to the Forests Amendment Act 2004, and to the Crown's indigenous forests and SILNA policies. We heard the claim urgently in Christchurch from 11 to 13 October, and reconvened in Wellington to hear closing submissions on 10 November.

In hearing this urgent claim, we have been conscious of the need not to make findings on matters which relate to other SILNA claims without hearing from those claimants, and not to treat this inquiry as if it were a full hearing of all SILNA issues. Our findings relate to the Wai 1090 claim alone. None the less, it may be some years before Wai 1090 (and other SILNA claims) can be fully heard. In our report, therefore, we have recorded our preliminary views on key issues, for the guidance of claimants and the Crown in any further discussions. We are satisfied that sufficient evidence was available for us to reach sound preliminary views, and that these should be of assistance to parties.

Our conclusions are summarised in chapter 5 of our report. The main focus of our urgent inquiry was, in the first instance, the claim that the Forests Amendment Act 2004 had removed the power of the claimants to export unsustainably logged timber, without compensation. The claimants argued that sustainable logging was uneconomic and would in any case only yield them \$1.66 million. Unsustainable logging over five years would have earned \$25.25 million (a difference of \$23.59 million). The Tribunal does not consider this part of the claim to be well founded. The valuations were unsatisfactory, and there does not

appear to be an export market for the Waimumu Trust's timber in any case. There has been no breach of the principles of the Treaty, and no prejudice to the claimants, arising from this part of the Forests Amendment Act 2004.

In terms of the domestic market, claimants and the Crown were in broad agreement that the Resource Management Act 1991 (RMA) and the Southland district plan have placed strong constraints on the owners' ability to carry out unsustainable logging. This was especially the case, after the Environment Court accepted the Crown's contention that the SILNA grants were not in a special category and requiring special treatment. As a result, the RMA is a key constraint on the claimants' ability to make an economic use of their SILNA lands.

The Forests Amendment Act arose from the Crown's SILNA and indigenous forest policies, as developed from 1990 to the present day. Parliament's intention in 1906 was clearly to provide at least a partial remedy for the Crown's failure to make adequate reserves for Ngai Tahu in the nineteenth century. The Crown began negotiations with SILNA owners in the 1990s in the belief that their lands were a compensatory award, the intent of which would be defeated by its new indigenous forests policy. In 2000, the Minister of Forests proposed to compensate all SILNA owners equally and to ensure that such a policy was consistent with the Treaty. His proposal was rejected, partly on the grounds that the historical evidence showed the SILNA awards were not in fact compensatory in nature. Such historical evidence was then subsequently and hastily commissioned. On the basis of the evidence available to us, this change of policy from 2000 onwards was probably inconsistent with both the historical facts and the principles of the Treaty.

In any case, we think that the Crown's actions in the 1990s created a legitimate expectation that the Waimumu Trust would receive compensation as a result of a negotiated settlement. This expectation was created by the initial framework agreement, and then strengthened by moratorium payments and the settlements of the Waitutu and Rakiura claims. The settlement of the latter, while based on the value the Crown put on those owners' forests for conservation purposes, was calculated on the basis of timber values. We think that the Crown has breached the principles of the Treaty of Waitangi by:

- ▶ abandoning negotiations for compensation without the concurrence of the Waimumu Trust; and
- ▶ imposing the NHF as the only effective alternative remedy, premised as it is on the low conservation value of the Trust's forest and the cessation of payments based on timber value.

We consider that part of the Wai 1090 claim to be well founded.

Despite this Treaty breach, the claimants have not yet suffered any prejudice. The option of applying to the NHF is still open to them. The Crown ought, in our view, to enable the NHF to provide compensation negotiated on the basis of commercial timber values, and to thereby retrieve the situation and ensure the Crown's compliance with the Treaty of Waitangi.

A handwritten signature in black ink, appearing to be 'LR Harvey', written in a cursive style.

Judge LR Harvey

Presiding Officer