

CHAPTER 3

THE ARGUMENTS OF THE CLAIMANTS

3.1 INTRODUCTION

The claimants can be grouped into several categories. As is clear from our introduction in the previous chapter, all opposed the Crown's recognition of the executive council's deed of mandate, but they did not share the same focus in doing so. Some were concerned with the overall process, others with the consequences of the process for specific kin or claimant groups, and others still had a primary concern with the Crown's overall settlements policy, and especially its preference for settling with 'large natural groups' of claimants. In this chapter, we run through the arguments of each of the claimant groups in turn, following the order in which they appeared before us, but attempting not to repeat identical or similar submissions made by more than one group.

3.2 TE ARAWA TAUMATA (THE WAI 1150 CLAIMANTS)

The Te Arawa taumata was perhaps the primary claimant group in the inquiry, since it opposed the entire mandating process rather than focusing on specific aspects relating to a particular kin group. We consider that its concerns fell under approximately five heads, which we describe as follows:

- ▶ the Crown's partiality and its non-recognition of the taumata's own mandate;
- ▶ Te Arawa's ongoing support for the taumata and their rejection of Rawiri Te Whare's plan;
- ▶ problems with the conduct and recording of mandating hui;
- ▶ opposition to the council structure; and
- ▶ the Crown's failure to investigate concerns about the process actively.

We now relate its arguments in more detail on each of these matters.

3.2.1 The Crown's partiality and its non-recognition of the taumata's own mandate

The claimants argued that the Crown had not recognised the mandate that it (the taumata) saw itself as already holding at the start of 2003. Indeed, counsel contended that the Crown

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had viewed Te Arawa as some kind of mandate ‘terra nullius’ situation despite years of taumata involvement (through the VIP project) in leading the progression of Te Arawa claims both through the Tribunal process and towards direct negotiation.¹ Counsel said it was contended not so much that the taumata stood ‘above other bodies in the region, or [had] authority over Claimants or Hapu or Iwi’ but rather that the Crown should have recognised that it was the taumata which had, ‘by the time the Crown finally decided to engage in meaningful settlement discussions with Te Arawa, been playing this role for at least four years’.² Counsel further argued that the Tribunal itself had previously recognised VIP’s ‘popular support’, referring to the directions of the deputy chairperson and Joanne Morris of 5 September 2001, which referred to the ‘critical mass achieved by the Wai 791 claimants in the VIP project’.³ In ignoring this pre-existing mandate, counsel argued, the Crown had failed to respect Te Arawa’s mana.

In support of this argument, counsel cited the Tribunal’s *Taranaki Report: Kaupapa Tuatahi*, which had found that Maori communities should be able to choose their own leadership rather than have the Crown effectively make that decision for them. The Tribunal wrote:

The problem is not that the Government’s answers were wrong but that the Government presumed to decide the questions at all, for it is the right of peoples to determine themselves such domestic matters as their own membership, leadership, and land entitlements. Remarkably, it was presumed that the Government could determine matters of Maori custom and polity better than Maori and that it should have the exclusive right to rule on what Maori custom meant.⁴

Counsel concluded that the Crown had been well aware of the ‘clarity of leadership within Te Arawa’ and had, therefore, been duty-bound ‘to abide by *Taranaki* Principles when dealing with Te Arawa, and it failed to do so’.⁵ Instead, the Crown had become ‘Te Arawa’s Kingmakers’.⁶

Counsel also rejected the suggestion that VIP or its offshoot, the Te Arawa taumata, had only ever had claimant – as opposed to iwi/hapu – support. For example, counsel argued that certain claims had been made with full iwi/hapu backing and that the Wai numbers were in effect synonymous with the particular kin group. Counsel cited Ngati Rangiwewehi as an example of this, and noted Mr Te Whare’s own previous submission of support for the VIP collective on behalf of Ngati Tahu/Ngati Whaoa.⁷

1. Paper 3.3.19, p12

2. Paper 3.3.1, p17

3. Ibid, p19 (in reference to doc A11(a), p263)

4. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p5; paper 3.3.1, p8

5. Paper 3.3.19, p10

6. Paper 3.3.1, p3

7. Paper 3.3.19, p13 (in reference to doc A11(a), pp334–337)

Counsel said that the date at which the Crown first ‘sidelined’ the taumata was when it met alone with Tumu Te Heuheu and Rawiri Te Whare in 2002. At that point, said counsel, the taumata’s support was ‘undisputed’,⁸ but MICOTOWN then ‘selected’ Mr Te Heuheu to progress mandate issues, and the latter took Mr Te Whare along ‘as his assistant’.⁹ From then, said counsel, it was Mr Te Whare, and not the taumata, that the Crown met with, groomed, and adopted as their facilitator. They did so while he was employed by the taumata, and ‘without the knowledge of the Te Arawa Taumata’.¹⁰ Counsel argued that this was in breach of proper rules of management accountability to governance, since Mr Te Whare was an employee of the whole taumata (and specifically designated northern region coordinator) and was not answerable to the chair alone.¹¹ Furthermore, said counsel, it was a breach of Te Arawa tikanga for Mr Te Whare to be placed in this facilitative position by someone from another tribe (Ngati Tuwharetoa).

Counsel added that the Crown’s alleged partiality continued during the mandating process in that it actively supported and bolstered the status of Mr Te Whare, even though he was acting without the taumata’s sanction. Counsel said that, despite the Crown’s constant insistence that it is inappropriate for it to interfere in internal tribal business, ‘the reality is that OTS did interfere and did favour one side in the electoral process’. This favouritism manifested itself not so much in active intervention, according to counsel, but in OTS ‘closing its eyes’ to the flaws each time it received a complaint about the mandating process.¹² Furthermore, said counsel, the Crown’s statement that the person proposing the mandate had no greater status than anyone else is ‘extraordinary’ when ‘the experience in Te Arawa shows that the person whom the Crown chose to be its facilitator (Mr Te Whare) became the chairman of the group claiming the mandate’.¹³

3.2.2 Support for the taumata and rejection of Rawiri Te Whare’s plan

The claimants contended that hui of Te Arawa both expressed support for the taumata facilitating the mandating process and rejected Rawiri Te Whare’s plan. Despite this, said counsel, Mr Te Whare carried on regardless and did so with OTS approval.

The first hui in question is that of 5 March 2003 held at Tamatekapua. As noted in chapter 1, this was a Te Arawa-wide meeting that followed on from the preceding month’s hui at which interim representatives had been selected. Following Mr Te Whare’s own presentation on the night, two resolutions were passed: first, that Te Arawa enter direct negotiations and, secondly, that ‘this hui of all the hapu of Te Arawa support and uphold the present VIP Taumata

8. Paper 3.3.1, p21

9. Paper 3.3.19, p11

10. Paper 3.3.1, p17

11. Martin Taylor, cross-examination of Rawiri Te Whare, 25 June 2004

12. Paper 3.3.19, p8

13. Ibid, p10

and proposed legal entity'.¹⁴ Both the Crown and the council argued that this effective rejection of Mr Te Whare's role and endorsement of the taumata's facilitation of the process were invalid, since the advertised agenda had been departed from. However, counsel contended that the expression of support for the VIP taumata fell comfortably within item 3 on the advertised agenda; namely, 'Who will represent Iwi and Hapu who wish to be included in discussions?'¹⁵

Then, on 22 May 2003, Mr Te Whare presented his 'Te Ara Tika' plan to a hui of Te Arawa interim representatives. According to Pihopa Kingi, the plan was not approved and the hui reiterated the support expressed on 5 March for the taumata to lead management of the claims.¹⁶ Te Ururoa Flavell added that the hui decided to put the plan to a meeting of Te Arawa whanui.¹⁷ In the meantime, the mandate plan was put to the VIP taumata at a meeting in Taupo on 16 June. Contrary to Mr Te Whare's opinion, counsel maintained that that hui had in no way approved of the plan. The minutes record that Mr Te Whare's update, with the plan attached, was merely 'received and noted'.¹⁸ Taumata witness Malcolm Short was adamant that there had never been any intention to vote on or approve what was only a 'report on progress'.¹⁹

On 11 June, Mr Te Whare sent out a notice for a hui to be held at Te Ao Marama on 17 June to consider the draft mandating plan. Counsel described the notice period as quite insufficient. As we have noted, those invited to the hui were limited to interim representatives, taumata members, and representatives of the Te Arawa Maori Trust Board, Te Pukenga Kaumatua o Te Arawa, and Te Kotahitanga o Te Arawa. Besides the short notice, 17 June was already set down for a Tribunal judicial conference in Taupo, which taumata members and their counsel were committed to attending. According to Pihopa Kingi, Mr Te Whare's timing seemed intended 'to exclude the Taumata from full participation'. Nevertheless, on 17 June, a motion that Mr Te Whare's plan be adopted was 'lost by a large majority'. Instead, the meeting resolved to refer the matter to a further meeting, to be held on 28 June, at which all Te Arawa claimants would be invited to participate.²⁰

Despite what counsel referred to as this 'huge rejection',²¹ Mr Te Whare decided to proceed to implement his plan, supposedly on the basis of being approached after the hui by individual interim representatives who told him to go ahead, and because nine of the 13 interim representatives present at the hui had voted in his favour. Counsel submitted that 'to proceed on the basis of individual authorities to hold hui is unheard of in Te Arawa. It places the

14. Document A11(a), p382

15. Paper 3.3.1, p20; paper 3.3.19, p14; see notice of meeting at doc A11(a), p380

16. Document A3, para 21

17. Document A5, p7

18. Document A137, exhibit 1

19. Ibid, pp2-3

20. Document A3, para 32

21. Paper 3.3.19, p15

individual before the collective. It allows the tail to wag the dog.²² Counsel queried just which interim representatives had approached Mr Te Whare afterwards. He named three persons, but counsel contended that only one of them was an interim representative. In the circumstances, counsel submitted, this rather undermined Mr Te Whare's assertion that only the votes of interim representatives were relevant at the hui.²³

3.2.3 Problems with the conduct and recording of mandating hui

According to the taumata, the problems with the mandating process – such as discrepancies over minutes of hui, the adequacy of notice about and explanation of the council, and so on – mean that the Crown's requirement for an open and robust process was not met. Counsel rejected the suggestion of Mr Stone for the council that only a limited number of the hui were challenged in any way. To illustrate this, counsel summarised the 19 mandating hui as follows:

Hui	Reaction
Ngati Kea/Ngati Tuara	No challenge
Tuhourangi/Ngati Wahiao	Challenge, no final authority given, minutes incorrect
Ngati Te Roro o Te Rangi	No challenge but no correct minutes seen
Ngati Tarawhai/Ngati Rongomai	No challenge
Ngati Pikiāo	No challenge
Ngati Rangitihī	Clearly a large challenge from Kensington Swan
Ngati Tahu/Ngati Whāoa	Treatment of Ngati Whāoa and counting of children in vote challenged
Ngati Rangiteāore	Challenged to extent that no final authority given
Waitaha	Rejected kaihautu
Tapuika	Rejected kaihautu
Ngati Whakaue	Challenged to extent that no final authority given
Ngati Tuteniu	Swinging 9–10 balance as to whether kaihautu and executive accepted; independent status of hui challenged – previously regarded as part of other hapu/iwi
Ngati Rangiwewehi	Timing challenged and no final authority given
Ngati Uenukukopako	No challenge
Ngararanui/Ngati Te Ngakau/Ngati Tura	Challenged to extent that no hui held on separation of Ngararanui representation
Auckland rohe	No challenge
Hamilton rohe	No challenge
Wellington rohe	No challenge
Christchurch rohe	No challenge

Results of mandating hui. Source: paper 3.3.19, pp26–27.

In other words, there was outright rejection of the executive council at two of the mandating hui, and serious challenges arising out of a number of others.

22. Ibid, p17

23. Ibid, p18

A number of the challenges arose in response to the minutes of the hui that were provided to the Crown as part of the deed of mandate. These minutes followed a standard format that barely differed from hui to hui. For example, every set of minutes stated ‘The presentation overview outline addressed the four mandating principles as advertised’ and ‘In depth discussion and questions were answered by Presenter (Rawiri Te Whare)’. However, counsel pointed out that this was certainly inaccurate in the case of the Ngati Tuteniu hui, as Mr Te Whare had not been present at that meeting. With respect to the Ngati Rangiwewehi minutes, Te Ururoa Flavell disputed that Mr Te Whare had led any ‘in-depth discussion’.

Each set of minutes also recorded the (almost identical) resolutions put and voted on at the hui. The resolutions, which we have already traversed in chapter 1, included that the iwi/hapu:

- ▶ would agree to enter direct negotiations for a ‘comprehensive settlement of all their historical claims’;
- ▶ would elect representatives (of unspecified number) to the kaihautu ‘to represent them in the negotiations process’; and
- ▶ would agree that all the kaihautu representatives would choose between five and eight ‘kaiwhakarite’ to negotiate a comprehensive settlement of all Te Arawa historical claims.

Counsel observed that the Ngati Rangiwewehi minutes were totally inaccurate, because the resolutions recorded as being put at that hui referred not to Ngati Rangiwewehi but to Ngati Tuteniu. Furthermore, Mr Flavell said that the 11 people elected at the hui were to negotiate a settlement of Ngati Rangiwewehi’s claims themselves, not just to be part of the kaihautu.²⁴ With respect to the Ngati Wahiao hui, Mihikore Heretaunga argued that, contrary to the minutes, there had been no agreement about the five to eight negotiators, and that instead the hui had decided to debate the matter further at a subsequent hui.²⁵

With respect to the Ngati Tahu–Ngati Whaoa hui, Mike Rika alleged some irregularities. For example, the vote taken on the night as to whether Ngati Whaoa should have separate representation from Ngati Tahu (in which only members of Ngati Whaoa were eligible to vote) was invalid, because many who were not Ngati Whaoa (as well as a number of children playing outside) were counted in the tally. He argued that such a vote should have taken place at Ngati Whaoa’s own marae at Mataarae rather than on a Ngati Tahu marae.²⁶ Mr Rika further alleged that the list of attendees was incomplete, which was something Rangi Easthope also claimed about the Ngati Tuteniu hui.²⁷

Altogether, counsel for the taumata said that the minutes ‘can only be described as a shambles, which should have put the Crown on alert to the need for independent verification’. In any event, counsel argued, the minutes do reveal that Ngati Whakauae, Ngati Rangiteaorere, and Ngati Rangiwewehi did not approve of the resolution that kaihautu representatives

24. Document A6, p6

25. Document A7, p1

26. Document A9, p5

27. Document A26, p5

would select five to eight negotiators to settle all the Te Arawa claims. Counsel added that the weight of evidence was that Ngati Wahiao also did not pass this resolution at its mandating hui. Therefore, counsel concluded, there was no authority from the mandating process for individuals representing these hapu – which comprise ‘a major part of Te Arawa’ – to be included in the council.²⁸

3.2.4 Opposition to the council structure

The claimants also expressed concerns that the council structure itself was not in accord with Te Arawa tikanga. Nor, they said, had there been any proper notification about it in the hui advertisements, let alone adequate explanation of it at the hui themselves. Overall, said counsel, the council had been founded on ‘too little consideration, too little information, and too little consultation from Hapu and claimants of Te Arawa’.²⁹

Counsel made the point that, in the public notices for the mandating hui, there was no mention of the executive council.³⁰ Those notices referred solely to several meeting objectives (or ‘mandating principles’) to be discussed at the hui. These were essentially the same as the resolutions voted on that we referred to above (that is, to secure a mandate to enter into direct negotiations for the comprehensive settlement of all Te Arawa historical claims, to elect representatives to the kaihautu, and to gain agreement to the selection of five to eight ‘kaiwhakarite’ or negotiators).³¹ Counsel conceded that a handout which included a diagram depicting a ‘komiti’ of 14 members between the kaihautu and the negotiators may have been distributed at the mandating hui but contended that this ‘komiti’ had not been explained or even specifically discussed at the hui.³² Counsel adduced further affidavits from several witnesses who argued that the handout had been quite insufficient for the conferment of any endorsement of the proposed council.³³ More to the point, said counsel, ‘the komiti did not feature in the mandating resolutions where the Claimants gave their mandate to their Hapu representatives’.³⁴

Counsel rejected the suggestion that the council structure had been approved at the 16 September 2003 hui. That hui lacked validity, counsel said, because of inadequate notice and because of its timing – it was held when both counsel and Pihopa Kingi were overseas. Furthermore, no vote ever took place – either on 16 September itself or during the mandating hui – as to whether there should even be an executive council. As counsel pointed out, the

28. Paper 3.3.19, pp20–21

29. Ibid, p8

30. Ibid, p23

31. See the examples in document A130.

32. The handout was the ‘presentation overview’ referred to in the hui minutes, which was submitted in evidence by Rawiri Te Whare during our proceedings: see doc A142.

33. Documents B3, B6, B7

34. Paper 3.3.19, p23

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notice of 8 September presumed a prior acceptance by stating that ‘The sole purpose of this meeting is for each group within the Kaihautu to elect one person from their group onto the Executive Council’.³⁵ No alternatives were put up at the meeting for debate, said counsel, meaning that ‘the Executive council structure was simply imposed by Mr Te Whare’. Counsel also said that the 16 September hui came at a time when some groups, such as Ngati Rangiwewehi, had still not formally mandated representatives and were thus unable to participate officially.³⁶ Ngati Whakauae were in the same position, said counsel, but Mr Te Whare later relied upon a ‘personal communication’ to confirm that they now approved of the council structure.³⁷

Counsel stressed that the hui was quickly followed by a petition signed by 48 of the 98 kaihautu representatives, who sought further information and a rerun of the hui. This, said counsel, completely undermined the theoretically unanimous support of the kaihautu on 16 September.³⁸ One such participant who rescinded their support was taumata witness Pirihiira Fenwick. Mrs Fenwick admitted under cross-examination by Crown counsel that she had voted in favour of the council on the day, but she explained that she really had no authority to do so, since Ngati Rangiteaorere had not properly mandated her at that point. In her evidence, Mrs Fenwick described the 16 September hui as an ‘ambush’ and as having been ‘rigged to one outcome’ by Rawiri Te Whare ‘and his personal team of supporters’.³⁹

With respect to the council’s rules, counsel argued that they were not the subject of any consultation within Te Arawa but had rather been formulated by the council itself. Moreover, counsel submitted, the rules were inadequate in any event, providing ‘very little in the way of responsibility from the Executive Council’ to the kaihautu. For example, there is a requirement for no more than a reporting meeting once a month and no requirement for consultation. Counsel suggested that the kaihautu members in whose names the rules exist but who have had no say in them, ‘risk their good names, reputation and credibility by that nominal association’.⁴⁰

Counsel was particularly critical of the proportionality of iwi/hapu representatives on the council. From an advertised intention for one person to be elected per iwi/hapu (which accorded with Mr Te Whare referring to 14 ‘komiti’ members in his presentation overview handout), the total number of council members expanded, as did the number representing certain groups. According to Te Ururoa Flavell, Mr Te Whare explained at the 16 September hui that he personally had decided to give some groups more seats on the council on the basis

35. Document A11(a), p 500

36. Paper 3.3.1, p 45

37. Martin Taylor, cross-examination of Rawiri Te Whare, 25 June 2004

38. Paper 3.3.19, pp 23–24

39. Document A29, p 2

40. Paper 3.3.19, pp 25–26

of population statistics.⁴¹ Counsel submitted that Mr Flavell's account was un rebutted, and that the 'arbitrary nature of the representation on the Executive Council is a fundamental reason to remove mandate'.⁴² The Crown's acceptance of the council's advice that matters of representation were resolved according to tikanga, said counsel, was 'extraordinary'.⁴³

Specifically, the claimants made reference both during cross-examination and in submissions to a number of allegedly incongruous and disproportionate cases, which we summarise as follows:

- ▶ The varying treatment of Ngati Whaoa, Ngati Tamakari, and Ngati Tuteniu must be considered. While Ngati Whaoa were compelled to join up with Ngati Tahu, and Ngati Tamakari were denied representation separate from Ngati Pikiāo, Ngati Tuteniu's seat arose only because Mr Te Whare decided to offer them a mandating hui, without consulting either themselves or their close Ngati Rangiteaorere relations.⁴⁴ According to tau-mata witness Rangi Easthope, this was because Mr Te Whare wanted to use his 'personal friendship' with some of the hapu to 'manipulate a position of control of Ngati Tuteniu' and 'place one of his loyal allies into a voting position' on the council.⁴⁵
- ▶ Ngararanui gained a seat only as the result of personal conflict within the wider grouping, including Ngati Te Ngakau and Ngati Tura: 'A personal conflict is not the type of matter that should result in an additional vote at the governance table'.⁴⁶
- ▶ With only two seats, Ngati Whakaue are under-represented given the size of their population. If one counts the seats for Ngararanui and Ngati Te Ngakau–Ngati Tura, they have four, but these are disproportionately split with two just for the Ngongotaha area and two for the rest of Ngati Whakaue put together.⁴⁷ If groups like Ngararanui can achieve separate representation, then so should larger groups within Ngati Whakaue such as Ngati Pukaki and Ngati Tunohopu. The separate status for the smaller groups should have been approved by the whole of Ngati Whakaue first.
- ▶ Ngati Pikiāo are equally under-represented given their size, especially since they have only one seat. That Ngati Tuara–Ngati Kea also have one is disproportionate.

In sum, said counsel, 'If some parties are favoured with the grace of gaining a seat at the table, there should be a process for all parties to have that same favouring'.⁴⁸ Furthermore, counsel felt that the 'ad hoc' nature of the decision-making over council representation meant that the Crown 'should have insisted on more stringent measures of mandate assessment'.⁴⁹

41. Document A5, p9

42. Paper 3.3.1, pp 45–46

43. Paper 3.3.19, p 27

44. Paper 3.3.1, p 46

45. Document A26, p 5

46. Paper 3.3.1, p 46

47. Ibid, p 47

48. Paper 3.3.19, p 28

49. Ibid

3.2.5 The Crown's failure to investigate actively

Counsel for the taumata argued that the Crown failed to fulfil its Treaty obligation to carry out an active investigation of the strength of the council's mandate and the concerns of the submitters opposed to it. Overall, said counsel, the Crown's assessment of the council's purported mandate was 'woefully inadequate' and, to this extent, followed on from the Crown's failure to inquire adequately into the extent of the taumata's mandate in the first place.⁵⁰ Counsel described the Crown's obligation in assessing a mandate as an 'active duty of informed assessment'. It was quite insufficient, said counsel, for the Crown merely to:

- ▶ read submissions and pass them to the council for comment;
- ▶ refuse to enter into dialogue with the submitters to discuss their concerns;
- ▶ assume that individuals filing submissions spoke only for themselves and not (in the case of Mr Flavell and Ngati Rangiwewehi, for example) for entire iwi;
- ▶ draw inferences from events prior to the submissions in preference to the actual concerns expressed in the submissions themselves; and
- ▶ assume that a lack of submissions from most petitioners meant that they were satisfied at the time submissions were called for.⁵¹

Furthermore, said counsel, Mr Hampton's justification for this passivity that the Crown should not 'foist' itself upon iwi was quite misplaced. Counsel submitted that 'An active review is required, not to impose on Iwi, but to ensure that the protection of an open and robust mandating process is afforded to all members of an iwi in practice, not just in words on a page'.⁵² Counsel noted Mr Hampton's further comment that the Crown could not be held responsible for matters that were not raised in the submissions process and were only now being raised during the hearing by arguing that the Crown would have known of all these concerns if it had undertaken an 'appropriately serious assessment' of the submissions.⁵³

Overall, said counsel, the Crown and the council were quite wrong to dismiss opposition to the council's deed of mandate as emanating from a small minority within Te Arawa only. Counsel pointed to the number of signatures on the September 2003 petition and the number of affidavits filed in support of the taumata's claim as evidence of an 'extremely large and real' dispute over the mandate.⁵⁴ The Crown's proposed remedy of the dispute – namely, requiring that places be reserved on the council for groups such as Ngati Rangiwewehi that had refused to come on board – was, said counsel, quite inadequate. Instead, the Crown should rescind recognition of the council's mandate and return the parties 'to the position which they would have been in, but for the Crown's failure'.⁵⁵ In response to questions from the Tribunal, counsel submitted that what would be required would now be a series of three mandating hui per

50. Paper 3.3.19, p 4

51. Ibid, pp 29, 35

52. Ibid, p 30

53. Ibid, p 31

54. Ibid, p 33

55. Ibid, pp 32, 36

iwi/hapu spread over three months run by the taumata, under the scrutiny of an independent auditor appointed by the Tribunal.

3.3 NGATI RANGITIHI CLAIMANTS (WAI 996)

For the sake of convenience, we will refer here to that group of Ngati Rangitihī claimants who filed a claim in these proceedings (Wai 1175) as ‘Wai 996’. The necessity for this shorthand is because, as they themselves acknowledged, the claimants do not speak for all Ngati Rangitihī. Counsel was quick to recognise this. Indeed, it was central to the Wai 996 claim to do so, because it is something that the claimants wished to contrast with the situation of Wai 524, the rival Ngati Rangitihī claim. As counsel put it, ‘the Wai 524 claimants, in effect, through their involvement in the Kaihautu process, in fact *do* claim to represent [the] Wai 996 claims cluster and the incorporated society and are, almost incredibly, recognised by the Crown as having the authority to do so’ (emphasis in original).⁵⁶

The claimants’ arguments revolved around several issues. For a start, counsel made some effort to argue that his clients represented a large proportion, if not the bulk, of Ngati Rangitihī people. They had established an incorporated society, for example, with a current membership of 1700 persons.⁵⁷ Moreover, counsel argued, Wai 996 had been active in furthering and protecting Ngati Rangitihī’s interests, which counsel portrayed as being in sharp distinction to those associated with Wai 524. As examples, counsel said that Wai 996:

- ▶ had protected Ngati Rangitihī’s interests in the Tuwharetoa ki Kawerau settlement;
- ▶ had participated in the foreshore and seabed inquiry;
- ▶ had established a website; and
- ▶ were now participating in the Urewera inquiry.

By contrast, the Wai 524 claimants, counsel said, had failed to act in respect of the Tuwharetoa ki Kawerau settlement (which was in itself the catalyst for the filing of the Wai 996 claim) and been struck out of the Urewera inquiry for taking no steps.⁵⁸ Counsel stressed the irony that those who had been ‘making all the efforts on Ngati Rangitihī’s behalf in the Tribunal’ had been ‘completely sidelined and ignored by those responsible for putting together the Kaihautu’. Counsel explained that Wai 996’s wish was very simple: ‘to remain within the Waitangi Tribunal process and to enjoy the full benefits of the research currently being commissioned. What gives anyone else the right to impose a different strategy on them?’⁵⁹

56. Paper 3.3.4, p5

57. While counsel’s submissions stated that there were 1500 members of the society, counsel added verbally that the current figure was 1700. In this context, counsel also submitted that Ngati Rangitihī were a group equal to or larger in size than a number of other groups with which the Crown was prepared to negotiate on their own in other districts: paper 3.3.4, p6.

58. Paper 3.3.4, p4

59. Ibid, p5

Counsel also rejected the submission of counsel for Wai 524 that the Wai 996 claimants needed to demonstrate a mandate from the whole of Ngati Rangitihi before bringing their claim (see ch 4). The jurisdictional requirement was only for a claim to allege that Crown action was prejudicial and a breach of the Treaty, counsel stressed.⁶⁰

In his cross-examination of Henry Pryor, Wai 524 claimant and council representative for Ngati Rangitihi, counsel questioned just how Mr Pryor could represent other Ngati Rangitihi claimants given his lack of accommodation or dialogue with them.⁶¹ Mr Pryor said that Wai 996 could pursue their claim however they wished, revealing that he did not realise that the council would have the sole mandate to settle all Te Arawa claims whether a group like Wai 996 liked it or not. For counsel, this situation highlighted the ‘acute’ problems with the ‘badly designed and seriously flawed’ negotiating structure, given the ‘virtually non-existent’ lines of accountability from the council back to the iwi. As counsel put it, Wai 996 do not want to be represented by Mr Pryor, ‘while he for his part has made no effort to consult with them or set up a claimant committee which is in any way representative’.⁶²

Counsel submitted that the Crown’s own negotiations guidelines (as set out in its publication *Ka Tika a Muri*) had not been met. There, the Crown states that representatives of groups negotiating settlements should be ‘fairly representative of all the interests that must be taken into account’. Counsel contended that Mr Pryor in no sense fitted this description. Secondly, the OTS guide states that a deed of mandate should ‘endorse a structure by which the mandated representatives are accountable to the wider group’,⁶³ but counsel argued that the deed appeared to have ‘a very marked *lack of accountability*’ (emphasis in original).⁶⁴

Counsel argued that a large part of the problem was that the negotiating structure – which he described in an oral comment as a ‘centralised negotiating structure’ being imposed on a ‘decentralised social structure’ – had been endorsed by the Crown well before research had revealed what the key issues in the claims would be. As counsel put it, the Crown cannot ‘properly assess a mandating structure without some understanding of the *issues* that are in dispute. Mandate, negotiating structure, and the range of issues in dispute are in our submission *linked*.’ (Emphasis in original).⁶⁵ Counsel argued that it would be better all round if a Tribunal inquiry were to take place first before settlement negotiations commenced. Counsel drew a contrast with the Tribunal’s recently published *Mohaka ki Ahuriri Report*, in which, he

60. Paper 3.3-13, p14

61. It should be added that counsel also disputed the adequacy and legitimacy of the process that saw Mr Pryor elected and rejected the Crown’s position that the flawed Ngati Rangitihi mandate of the council could simply be obtained through a ‘reconfirmation hui’: paper 3.3-4, pp16–17, 20.

62. Paper 3.3-13, pp3–4

63. Office of Treaty Settlements, *Ka Tika a Muri, Ka Tika a Mua: He Tohutohu Whakamarama i nga Whakataunga Kereme e pa ana ki te Tiriti o Waitangi me nga Whakaritenga ki te Karauna – Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 2nd ed (Wellington: Office of Treaty Settlements, [2002]), p49

64. Paper 3.3-13, p4

65. *Ibid*, p5

said, the Tribunal had carefully considered, on the basis of full information on the historical issues, the groups with which the Crown should negotiate a settlement. For example, counsel pointed to the way in which the Tribunal had suggested in that report that a ‘large natural group’ of claimants could form around those who shared a particular historical issue (the Mohaka–Waikare raupatu). If this same analysis were applied to the Te Arawa claims, said counsel, it would certainly have important implications for just what kind of negotiating structure would work.⁶⁶

Related to this, counsel argued that the Tribunal should be mindful of ‘preserving the integrity of its own process’ by endorsing what counsel described as a quite unexpected departure by the Crown of proceeding to settlement negotiations before the completion of the research.⁶⁷ Counsel reminded us of the Tribunal’s directions of 25 March 2003, in which Judge Wickliffe had written that the Tribunal:

seeks to add value to the achievement of comprehensive and durable settlements by ensuring that Treaty grievances are thoroughly researched, by conducting fair and transparent public inquiries into all claims before it, and by completing authoritative reports on whether the claims are well-founded.

Counsel submitted that it was implicit in the Tribunal’s words that the Tribunal believed that settlements require ‘proper research’ and that ‘its own process is the most fair and transparent means of ensuring that negotiations and settlement are carried out in a fair and accountable way’. Counsel said that the Wai 996 claimants agreed strongly with these propositions, and had had ‘every expectation that their claims would be heard by the Tribunal *as part of a process of eventual settlement*’ (emphasis in original).⁶⁸ Counsel said that Wai 996 had reacted with ‘dismay and astonishment’ to the plan revealed by council member Paul Tapsell for the council to hold its own ‘hearings’.⁶⁹

Counsel also made some submissions on the overall Treaty settlements process, noting the frequency of claimant resort to the Tribunal in the context of the Crown’s negotiation and settlement policies. This, said counsel, was because the courts had found that Treaty settlements were not justiciable and that claimants therefore had no recourse to judicial scrutiny of the Crown’s actions. Counsel argued that there was now an ‘urgent need for legislative intervention in the Treaty claims settlement area’:

What is needed is a Treaty Claims Settlement Act which lays down authoritatively general criteria after full parliamentary debate and which has been subject to input from all sectors, including all sections of Maori opinion, through the parliamentary select committee

66. Ibid, pp5–10. Counsel suggested that a proper analysis would conclude that ‘the most meaningful units’ for most people of Te Arawa are its constituent iwi, and that there was ‘no one centre or ‘voice’ for Te Arawa as such’: p7.

67. Ibid, p11

68. Ibid, p12

69. Ibid, p13

process. Such a statute could lay down authoritatively the relationship between the Tribunal regional inquiry process and Crown settlement negotiations, could define the relevant criteria relating to cultural and commercial redress, and could define the relevant entities with whom the Crown should normally negotiate and identify situations where departures from the general rule might apply.⁷⁰

Counsel suggested that there was some precedent for such an approach to be found in the statute books of various states of the United States.⁷¹

Finally, counsel sought several recommendations from the Tribunal, including that:

- ▶ any deed of mandate recognition be delayed until the conclusion of stage 1 of the Tribunal's inquiry process;
- ▶ no Ngati Rangitihi claimants be forced to abandon the Tribunal process against their will;
- ▶ the Crown recognise that Ngati Rangitihi is an iwi in its own right; and
- ▶ the Crown further recognise that the Ngati Rangitihi mandate has not been given to the council to represent any of its claims.⁷²

3.4 WAITAHA (WAI 664)

We will refer to the Waitaha claimants as 'Wai 664' for the sake of consistency with our treatment of other claimant groups in this inquiry, and not because we doubt that the Wai 664 claimants clearly represent the kin group known as Waitaha. Indeed, we are unaware of any challenge to their status in that regard.

Counsel for Wai 664 argued that, just as Waitaha had historically been marginalised and overlooked, so had they again been demeaned and belittled by the Crown's settlement policy. She explained that Waitaha were a border people whose territory was split between the Tauranga and Rotorua districts. In contrast to their Rotorua kin, they had fought against loyalist Te Arawa during the wars of the 1860s, been branded 'rebels', and suffered the confiscation of their lands in the Tauranga raupatu.⁷³ Now, in the Crown's arrangements for the settlement of the Te Arawa claims, they had not been consulted about the mandating process and it had simply been assumed that they would willingly join with the rest of Te Arawa in the settlement of their claims. But, said counsel, 'Waitaha are unwavering in their determination to achieve their own settlement, to restore their own mana'.⁷⁴

70. Paper 3.3.13, p17

71. Ibid, pp17-19

72. Paper 3.3.13, p20. In regard to recognising Ngati Rangitihi as an iwi in its own right, Wai 996 witness David Potter stated his view that the Crown should negotiate with each iwi of Te Arawa separately: doc A44, p14.

73. Paper 3.3.5, p2

74. Ibid, p4

More specifically, counsel was highly critical of the way Waitaha had been overlooked by Rawiri Te Whare during the mandating process. For a start, Waitaha did not elect any interim representatives, and thus the decision of the other representatives to proceed to a negotiated settlement of all Te Arawa claims was not one in which Waitaha had any say. Then, when Mr Te Whare called a Waitaha mandating hui on 20 July 2003, he did so not with the consent of Waitaha but with the approval of Tapuika kaumatua Pateriki Hiini (and on the apparent suggestion of Rereamanu Wihapi, also of Tapuika). In cross-examination, Mr Te Whare admitted that he knew of Wai 664 claimant Tame McCausland's status as a leader of Waitaha but conceded that he had never rung him. Counsel argued that Waitaha's mana had simply been usurped. She said that, while these matters were not necessarily relevant to Waitaha's claim against the Crown, 'the almost complete lack of consultation with Waitaha proper in the mandating process is a vivid illustration of why Waitaha are so opposed to joining Nga Kaihautu: they are always overlooked'.⁷⁵

Focusing on the Crown, counsel submitted that it had made a 'unilateral' decision that it would be in Waitaha's best interests for them to join the Te Arawa-wide settlement negotiations. The Crown had thence directed all its energies to 'persuading Waitaha to join Nga Kaihautu', rather than exploring other and more appropriate ways of settling Waitaha's claims.⁷⁶ Despite Waitaha's clear rejection of joining the council-led negotiations, the Crown had attempted to 'coerce' Waitaha into participating and had 'failed to respect their tino rangatiratanga by lecturing Waitaha on what is best for Waitaha'.⁷⁷

In evidence, Mr McCausland explained that a deputation of Crown officials visited him and other Waitaha representatives in Te Puke on 5 December 2003 to persuade them to join the kaihautu (notwithstanding Waitaha's repeated rejection of this at mandating hui). Despite his lengthy ('two hours') explanation of why this did not suit Waitaha, Mr McCausland soon received a letter dated 10 December 2003 from Ross Philipson of ORS which stated the Crown's view that Waitaha would benefit from participation in a Te Arawa-wide settlement and that Waitaha's concerns could still be resolved through discussion with the executive council. Mr McCausland said this letter showed that the Crown was 'not really interested in our point of view'. Into 2004, Waitaha suggested that the Crown conduct 'multi-lateral' negotiations, which would include a settlement with Waitaha and Ngati Makino. In rejecting this in a letter of 5 March 2004, the Minister expressed her conviction that 'the best interests of Waitaha and the Crown would be served through Waitaha participating in a Te Arawa-wide settlement'. Finally, Mr McCausland noted that the ORS mandate assessment paper submitted to Ministers in late March 2004 continued in the same vein, stating that officials would 'continue to encourage' Waitaha to join the negotiations. He said that 'The Crown wanted to tell us what was best for us, but what they really meant was what was best for the Crown'.⁷⁸

75. Paper 3.3.14, p3

76. Ibid, p12

77. Paper 3.3.5, p4

78. Document A113A, paras 42-55, apps D, I, J

Counsel made a number of submissions about the Crown's 'large natural groups' settlement policy. The policy, she said in opening, was now one of settling at a regional level with a 'conglomeration of tribal interests'. Counsel termed this 'mega-settlements'. She contrasted the policy as it applied to Te Arawa to the situation in Taranaki, where the Crown had been prepared to negotiate with iwi separately.⁷⁹ In closing, counsel stepped back slightly from her submission about a wholesale policy shift, after the evidence of Mr Hampton for the Crown, but she maintained that 'the Crown's emphasis has shifted towards the "large" at the expense of the "natural"'. She noted Mr Hampton's explanation that a significant factor for the Crown in choosing whether to enter negotiations with a particular group was whether such a decision would increase or decrease the number of settlements in future. This, she said, showed that the Crown viewed the size of a claimant community as an overriding imperative.⁸⁰ To this end, she maintained that the Crown's settlement policy simply did not have an 'adequate response' for a group like Waitaha, which is relatively small yet distinct in terms of history, claims, and whakapapa. Counsel said that Crown settlement policy ought, in fairness, to accord such groups equal priority with larger groupings – especially when they had suffered particularly serious Treaty breaches that had contributed to their marginalisation.⁸¹

Counsel was able to draw some parallels between the situation of Waitaha and that of Ngati Hineuru, whose claims had just been reported on by the Waitangi Tribunal in its *Mohaka ki Ahuriri Report*. In that report, the Tribunal found that Ngati Hineuru were a border group who had kinship links to all their larger neighbours but who existed to some extent 'in a sphere of their own'. Moreover, their grievances (through war and raupatu) were probably worse than those of their neighbours and were 'relatively distinct'. Altogether, the Tribunal considered that there appeared to be grounds for Ngati Hineuru to 'receive separate consideration'.⁸² Counsel submitted that Ngati Hineuru were in 'an analogous position to Waitaha'. She expressed support for what she described as the Mohaka ki Ahuriri Tribunal's 'finesse' in applying the 'large natural groups' policy, particularly on the basis of its 'detailed consideration of the particular circumstances of the claimant groups, including their historical experiences and grievances'.⁸³

Counsel maintained that the Crown's settlement policy was partly driven by 'political expediency'.⁸⁴ Ngati Manawa and Ngati Whare were being separately negotiated from the rest of Te Arawa, she said, not because of the size of their population or the gravity of their grievances but because of their proximity to key CNI forests. She submitted that, as a matter of principle, the priority afforded Ngati Manawa and Ngati Whare should have been equally extended to Waitaha and Ngati Makino.⁸⁵ In summarising what Waitaha want, counsel said

79. Paper 3.3.5, p11

80. Paper 3.3.14, p4

81. Paper 3.3.5, p5; paper 3.3.14, p11

82. Waitangi Tribunal, *Mohaka ki Ahuriri Report* (Wellington: Legislation Direct, 2004), p700

83. Paper 3.3.14, pp4–5

84. *Ibid*, p9

85. *Ibid*, p13

that ‘in terms of outcome they seek a separate Waitaha settlement, but in terms of process they are open to any process that delivers on the desired outcome’. To this extent, she said that Waitaha would be happy to negotiate alongside their fellow descendants of Hei, Ngati Makino.⁸⁶ For Mr McCausland: ‘Inclusion within a Te Arawa settlement would continue our marginalisation as a people . . . The most important thing to achieve through this claim is the restoration of our mana. Our claim is not about money; it is about our identity as a people.’⁸⁷

3.5 NGATI MAKINO (WAI 275)

Counsel for Wai 275 made a number of similar submissions to counsel for Waitaha and the taumata.⁸⁸ With specific regard to Ngati Makino, she argued that, despite having recognised the Ngati Makino deed of mandate in 1997, the Crown had:

- ▶ kept Ngati Makino waiting since that time;
- ▶ recognised the executive council’s mandate to represent Ngati Makino interests and ignored Ngati Makino objections to this;
- ▶ pressured Ngati Makino to join the executive council; and
- ▶ ignored an alternative negotiations strategy proposed by Ngati Makino.

Counsel explained that the Crown had recognised Ngati Makino’s deed of mandate in 1997, at a time when the Crown was actively negotiating the settlement of other raupatu claims in the eastern Bay of Plenty. Furthermore, said counsel, as late as OTS’ quarterly report of 31 March 2002, the Crown had referred to Ngati Makino as essentially being in negotiation by noting that they had a recognised mandate and agreed terms of negotiation.⁸⁹ Despite this, said counsel, on 2 April 2004 MICOTOWN announced that Ngati Makino had ‘not yet joined the [Te Arawa] negotiations’. She submitted that the Crown was well aware at this time of both Ngati Makino’s longstanding preparedness to negotiate a settlement with the Crown and its categorical rejection of joining the executive council’s negotiations. Furthermore, counsel did not accept that the inclusion of the Wai 275 claim in the deed of mandate was an error. She argued that it had been included through the ‘deceit and chicanery’ of the executive council and the Crown, who, despite their constant assurances that Ngati Makino were entitled to remain outside the kaihautu, in fact had ‘insidious intentions’ to settle Wai 275.⁹⁰

Counsel explained that representatives of Ngati Makino and Waitaha had presented a ‘multilateral’ negotiations strategy to the Crown as a means of allowing ‘the many identities within Te Arawa to be promoted without fear of subsumation’.⁹¹ The Crown, however, had

86. Ibid, p15

87. Document A113A, paras 37–38

88. As with Waitaha and Wai 664, we are unaware of any challenge to the right of the Wai 275 claimants to speak for Ngati Makino as a whole.

89. Paper 3.3.6, p14

90. Paper 3.3.15, para 3.16

91. Paper 3.3.6, p10

rejected this proposal. Counsel submitted that, in explaining the Crown's stance, Mr Hampton 'merely seemed to rely on the position that such an approach was not *his preference*' (emphasis in original). She criticised Mr Hampton as 'paternalistic' for his remark that the Crown knew what kind of negotiations worked best.⁹² Furthermore, counsel echoed counsel for Wai 664 in submitting that the Crown had actively attempted to 'coerce' Ngati Makino to join the kaihautu and 'to force Ngati Makino into a negotiation settlement framework that Ngati Makino wants no part of'. The Crown, she said, had rejected Ngati Makino's preferred settlement strategies with 'disdain and contempt'.⁹³

Over the years, counsel explained, the Crown had refused to progress the Ngati Makino settlement because of their close links to their relations in Ngati Pikiāo, who were not ready to proceed. This, she submitted, was in marked contradiction to the Crown's position elsewhere. For example, she quoted from the Tribunal's *Ngati Maniapoto/Ngati Tama Settlement Cross-Claims Report*, which recorded the Crown as arguing that it was 'unfair to claimants who were ready to negotiate a settlement with the Crown to make them wait until all overlapping claimants were in a position to negotiate'.⁹⁴ Counsel added that, in a letter to Ngati Makino of early March 2004, MICOTOWN stated that there was a strong likelihood that the close relationship of Ngati Pikiāo to Ngati Makino meant that settling with Ngati Pikiāo would effectively mean the settling of some Ngati Makino claims without their participation. As counsel put it:

Ngati Makino have been forced to wait since 1997 to progress their claims so that Ngati Pikiāo would be present and not be prejudiced. Now it seems that Ngati Pikiāo will be able to progress their claims without the participation of, and to the detriment of Ngati Makino, solely because they have agreed to the Crown's preferred settlement structure.⁹⁵

Ngati Makino witness Neville Nepia said that his people felt like the Crown was essentially forcing them 'into bed with those whom we wished to remain at arms length'. He described the Crown's actions as 'utterly disappointing and completely abysmal'.⁹⁶

In sum, said counsel, the Crown has committed 'a plethora of breaches' of the Treaty, including the 'unilateral . . . rejection of previously agreed terms of negotiation' and the 'unilateral curtailing of, and . . . blatant disregard for prior negotiations'. Counsel sought a recommendation from the Tribunal that the Crown 'treat with Ngati Makino in accordance with Crown policy and their agreed Deed of Mandate'.⁹⁷

92. Paper 3.3.15, para 3.18

93. Paper 3.3.6, p16

94. Waitangi Tribunal, *The Ngati Maniapoto/Ngati Tama Settlement Cross-Claims Report* (Wellington: Legislation Direct, 2001), p12

95. Paper 3.3.6, p18

96. Document A38, p3

97. Paper 3.3.15, paras 2.10, 4.2

3.6 NGATI TUTENIU (WAI 980)

Counsel for Wai 980 submitted that the issue of Ngati Tuteniu's participation within the kaihautu illustrated 'the inherent lack of stability within the Nga Kaihautu structure'. First, she said, Ngati Tuteniu sought separate representation within the kaihautu and this was granted. Then, the Ngati Tuteniu trust met and elected to withdraw from the kaihautu. Finally, a more recent meeting of the trust in fact resolved to reaffirm support for it. As counsel put it: 'This behaviour is illustrative of an iwi in a state of flux. Such uncertainty is an inevitable component of tribal politics. Such uncertainty is not something upon which a stable mandate may be founded.'⁹⁸

Counsel contended that the Crown was well aware of this instability but had nevertheless proceeded to recognise the authority of the kaihautu. Counsel thus sought a recommendation from the Tribunal that the Crown should now 'require a proper and full Treaty compliant mandating process to be adopted and implemented'.⁹⁹

3.7 NGATI TUWHARETOA TE ATUA RERETAHI NGAI TAMARANGI (WAI 21(a))

Counsel for Wai 21(a) explained that her clients' claim was a contemporary one involving environmental damage resulting from the operations of the Tasman Pulp and Paper Company and that it had been specifically excluded from the Ngati Tuwharetoa ki Kawerau settlement with the Crown. Her clients wished to take their claim 'to its finality through the Waitangi Tribunal process' and took little comfort from the Crown's suggestion that it would not be affected by the forthcoming negotiations with Te Arawa.¹⁰⁰ During the hearing, Mr Hampton gave a categorical assurance that Wai 21(a) would not be affected, and in reply, counsel agreed that her clients' concerns had thus 'largely been resolved'.¹⁰¹

3.8 NGATI TAMAKARI (WAI 1173)

Counsel contended that her client, David Whata-Wickliffe, represented the Ngati Tamakari hapu and that his mandate to do so had not been challenged during the Tribunal's urgent inquiry. She maintained that, although Mr Whata-Wickliffe and his brother Fred Whata had been elected as kaihautu representatives for Ngati Pikiao, the minutes of the mandating hui did not reveal that they had made the point that they were distinct representatives of

98. Ibid, para 3.32

99. Ibid, paras 3.33, 4.2

100. Paper 3.3.6, pp19-20

101. Paper 3.3.15, para 1.2

Ngati Tamakari. Counsel argued that Ngati Pikiao had recognised Ngati Tamakari's right to separate status at the February 2003 hui which elected interim representatives. In view of all this, she explained, Mr Whata-Wickliffe had been quite surprised to learn, in September 2003, that the Ngati Pikiao representatives were expected to select just one of their number as a member of the executive council. He objected to this, believing both that it was inappropriate and that it had never been discussed or agreed upon by Ngati Tamakari.¹⁰²

Counsel largely adopted the submissions of the taumata on the mandating process as a whole, adding that it was incumbent upon the Crown at the very least to investigate whether Ngati Tamakari's claims were 'substantial and distinct enough in themselves to stand outside the Pikiao representation on the Kaihautu framework'.¹⁰³ Counsel sought recommendations from the Tribunal that the Crown 'cease negotiations under the current mandate' and that it 'ensure Ngati Tamakari's interests are properly recognised and catered for in any future mandated negotiations'.¹⁰⁴

3.9 SUMMARY

The key points made in this chapter are as follows:

- ▶ The Te Arawa taumata argued that it had been wrongly sidelined by the Crown during the mandating process.
- ▶ The taumata and other claimants argued that the mandating process had been flawed, particularly in regard to the lack of notice about or explanation of the executive council structure.
- ▶ The taumata submitted that the Crown had failed to investigate actively the concerns raised about the mandating process.
- ▶ The Wai 996 claimants argued that Ngati Rangitahi had not in fact agreed to join the kaihautu.
- ▶ The Wai 664 and Wai 275 claimants argued that the Crown had unfairly pressured Waitaha and Ngati Makino to join the kaihautu and that both these groups were disadvantaged by the Crown's overall Treaty settlement policies.

102. Paper 3.3.2, pp2-5; paper 3.3.16, p2

103. Paper 3.3.2, p8

104. Paper 3.3.16, p10