

THE
TE ARAWA
MANDATE REPORT

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WAI 1150

WAITANGI TRIBUNAL REPORT 2004



The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Maori and Pakeha history in New Zealand as it continuously unfolds in a pattern not yet completely known

A Waitangi Tribunal report

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The Honourable Parekura Horomia
Minister of Māori Affairs



The Waitangi Tribunal
110 Featherston Street
WELLINGTON

and

The Honourable Margaret Wilson
Minister in Charge of Treaty of Waitangi Negotiations
Parliament Buildings
WELLINGTON

9 August 2004

Te Minita Māori

Tena korua e nga rangatira e noho mai na i te tunga tiketike e whakatutuki nei i nga wawata o te iwi Maori. Kati tena tatou i runga i te ahuatanga o nga mate huhua puta noa i te motu mai Muriwhenua ki Murihiku whakawhiti atu ki Rekohu/Wharekauri. No reira nga mate haere atu ra, haere atu ra, oti atu.

Ko tenei purongo e tukuna ake nei ki a korua i oti i runga i nga tono o etahi iwi, hapu ranei o Te Arawa me o ratou whanaunga, ara ko Waitaha. Ko tona kaupapa e pa ana ki nga mahi kei waenga i a ratou me te mahi a te Karauna kia whakamutu atu nga keremi tiriti o Te Arawa. Koiane nga kohikohinga korero me nga whakaaro a Te Roopu Whakamana i te Tiriti o Waitangi.

Enclosed is The Te Arawa Mandate Report, prepared following a hearing held in Rotorua over four days on 21, 22, 23, and 25 June 2004. The claims were brought by:

- ▶ Pihopa Kingi, Pirihira Fenwick, and Malcolm Short, for the Te Arawa taumata;
- ▶ David Whata-Wickliffe, of Ngati Tamakari;
- ▶ Te Ariki Morehu, of Ngati Makino;
- ▶ Stephen Hohepa and Te Kapua Watene, of Ngati Tuteniu;
- ▶ Isobella Hohipera Fox, of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi;
- ▶ David Potter and Andre Paterson, of Ngati Rangitahi; and
- ▶ Tame McCausland, of Waitaha.

In a nutshell, the claimants approached the issues differently but essentially these were claims about the decision of the Crown to recognise the mandate of Nga Kaihautu o Te Arawa Executive Council at the end of March 2004. Some were concerned with the overall process leading to the recognition of the mandate, others with the consequences of the process for specific kin or claimant groups, and others with the Crown's overall settlement policy, especially its preference for settling with 'large natural groupings' of claimants.

The Tribunal's focus during the inquiry was on the process adopted by the Crown to recognise the mandate of the executive council. In summary, we have found, inter-alia, that an active role in monitoring and scrutinising is required by the Crown to ensure that its actions in arriving at the recognition of a mandate remain consistent with the Treaty of Waitangi. In the circumstances of these claims, issues surrounding representivity and accountability have clearly not been fully and thoroughly resolved. In our view, the Crown failed to adequately identify these issues either during the implementation of the mandate plan or when assessing the quality of the council's mandate. Furthermore, we have pointed to the fact that Te Arawa have not had an opportunity adequately to discuss the composition of the council and its rules, particularly with respect to lines of accountability. That support may well be there, but it has not been formally tested. Before recognising the mandate of the executive council, the Crown failed to identify this problem.

While we identify these and other flaws in terms of process, we have asked ourselves whether they are so fundamental that they amount to actions or omissions inconsistent with the Treaty of Waitangi resulting in prejudice? In our view, the answer at this stage must be 'No'.

We welcome the fact that the Crown has indicated it is open to putting matters to right to the extent that it will review the new information raised during the hearing and decide whether any action is required. It is also very mindful of the need for 'mandate maintenance'. Moreover, it had previously requested a deferral of the Tribunal hearing so it could review the process by which the executive council's mandate was achieved itself.

We believe that the Crown is now in a much better position to undertake that review because of both our hearing and our report. If it now acts along the lines that we suggest, we consider that it ultimately will not have been in breach of the Treaty.

We believe that the Crown and the executive council should now allow some time for the kaihautu to discuss and 'reconfirm' the composition of the executive council and the proportionality of the seats on it. We also believe that the kaihautu should be allowed to address the issue of accountability from the council to the kaihautu and to its constituent iwi and hapu.

We suggest that a hui of kaihautu members be called for the purposes of this 'reconfirmation'. That seems the most sensible way of moving forward. The Crown and the executive council should, after consulting with the Te Arawa taumata, take joint responsibility for planning the hui.

We believe that this hui should be properly notified, with no fewer than 14 days' notice of agenda, date, time, and venue. It should have a suitable and independent chair, who should carefully manage the agenda. Given what we heard during the hearing, it may be appropriate to conduct that meeting at Tamatekapua, but again that is for the Crown and the executive council to decide, possibly in consultation with the Te Arawa taumata and the Te

Pukenga kaumatua. We also believe that there should be independent observers present to record the outcomes.

We believe that many of the concerns of those representatives of Ngati Rangiwewehi, Ngati Rangiteaorere, Ngati Whaoa, Ngati Tuteniu, and Ngati Tamakari who appeared before us will be dealt with by this process.

We also consider that the hui should not take place until Ngati Rangitahi have held one more hui at which they, finally and in the fairest of circumstances, either elect kaihautu representatives or choose to stand apart.

As for Ngati Makino, we think that their legitimate expectation of entering their own separate negotiations for some years now means that the Crown is obligated both morally and under its Treaty duty of good faith conduct to honour that undertaking at last. It means, effectively, that the Crown should now find some way to negotiate with Ngati Makino contemporaneously with the rest of Te Arawa.

With respect to Waitaha, we suggest that the Crown should perhaps have anticipated that Waitaha would choose to stand apart from the Te Arawa negotiations and have come up with a contingency plan accordingly. Depending on the decision of the Tauranga moana Tribunal, which we understand is imminent, we believe that Waitaha should be afforded 'priority' status, even if the exact same priority as the rest of Te Arawa is impossible under the Office of Treaty Settlements' current level of resourcing.

If it has not already not done so, the Crown should now require the executive council's deed of mandate to be amended to expressly exclude the claims of Waitaha and Ngati Makino.

We give the claimants the opportunity to return to the Tribunal, without further application for urgency, should the Crown fail to make an adequate response to our suggestions. If it does so fail, not only will it be in breach of the Treaty but it could also risk promoting entrenched division between the claimants (and their not insignificant number of supporters) and the executive council that will take many years to overcome. How can that be good for the honour of the Crown or for the enduring settlement of Te Arawa claims?

Finally, we provide some suggested guidelines of best practice, which, depending on the circumstances of particular claimant communities, could be utilised when the Crown and Maori are contemplating how to develop a Treaty-compliant process for recognising mandates to negotiate settlements.

Na Judge Caren Wickliffe
Presiding Officer

ABBREVIATIONS

app	appendix
ATL	Alexander Turnbull Library
c	circa
CA	Court of Appeal
ch	chapter
CFRT	Crown Forestry Rental Trust
CNI	central North Island
CNIISP	central North Island iwi settlement plan
comp	compiler
DNZB	<i>The Dictionary of New Zealand Biography</i> (5 vols, Wellington: Department of Internal Affairs, 1990–2000)
doc	document
DOSLI	Department of Survey and Land Information
ed	edition, editor
FOMA	Federation of Maori Authorities
ha	hectare
IA	Internal Affairs file
ltd	limited
MICOTOWN	Minister in Charge of Treaty of Waitangi Negotiations
MS	manuscript
n	note
NZLR	<i>New Zealand Law Reports</i>
NZMC	New Zealand Maori Council
p, pp	page, pages
para	paragraph
PC	Privy Council
pt	part
roi	record of inquiry
s, ss	section, sections (of an Act)
sec	section (of this report, a book, etc)
SOC	statement of claim
VIP	volcanic interior plateau
vol	volume

‘Wai’ is a prefix used with Waitangi Tribunal claim numbers

Unless otherwise stated, footnote references to claims, papers, transcripts, and documents are to the record of inquiry, which is reproduced in appendix 1.