

# Te Ika Whenua - Energy Assets Report 1993

## 4 Issues to be Determined

### 4.1 The Claimants Case

The case for the claimants may be summarised briefly as follows:

- (i) The claimants have lodged a claim relating to ownership and tino rangatiratanga of the Rangitaiki and Wheao rivers.
- (ii) The claim asserts that the tino rangatiratanga of the claimants has been disregarded by the Crown in allowing the construction of the Aniwhenua and Wheao power schemes on those rivers and the granting of water rights for those schemes.
- (iii) The projected transfer of the assets of these schemes from their present owners, the Bay of Plenty Electric Power Board and the Rotorua Area Electricity Authority to energy companies created under the Energy Companies Act 1992 is likely to prejudicially affect the claimants.
- (iv) The proposed transfer of these assets while claims affecting them remain undetermined and unresolved is inconsistent with the principles of the Treaty of Waitangi.

In briefly summarising the case for the claimants, we do not wish to derogate from the particulars of claim submitted by counsel for the claimants and her comprehensive submission in support thereof (A7). We seek merely to define the issues which this tribunal has to address.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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### 4.2 The Law

The claim is brought under Section 6(1) of the Treaty of Waitangi Act 1975. The relevant provisions are:

Where any Maori claims that he or she, or any group of Maoris of which he or she is a member, is or is likely to be prejudicially affected

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(a) By any ordinance of the General Legislative Council of New Zealand, or any ordinance of the Provincial Legislative Council of New Munster, or any provincial ordinance, or any Act (whether or not still in force), passed at any time on or after the 6th day of February 1840; or ....

(b) By any act done or omitted at any time on or after the 6th day of February 1840, or proposed to be done or omitted, by or on behalf of the Crown, -

and that the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission, was or is inconsistent with the principles of the Treaty, he or she may submit that claim to the Tribunal under this section.

To satisfy the provisions of the above section, the claimants must establish that firstly, they are likely to be prejudicially affected by the enactment of the Energy Companies Act and, secondly, that the provisions of the Act are inconsistent with the principles of the Treaty of Waitangi.

These are essentially the same issues as are outlined in our brief summary of the claimants' case.(see above, 4.1(iii),(iv))

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*Waitangi Tribunal, Department of Justice, Wellington.*

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### 4.3 The Argument for the Crown

The argument for the Crown is aimed directly at these issues and was summarised as follows:

- (a) The Crown has already carried out a consultative process with Maori prior to the enactment of the Act consistent with its Treaty obligations.
- (b) The capacity of the Crown to make redress for breaches of the principles of the Treaty (if any) remain [sic] unaffected by the Act.
- (c) The proposed transfer of the dams to energy companies pursuant to s 47 of the Act is not inconsistent with the principles of the Treaty.
- (d) It is not a breach of the principles of the Treaty for the Crown to fail to include reference to the Treaty in legislation or to specifically provide in such legislation a protective mechanism for Treaty claims - even if the claimants would be prejudiced by the transfers.(A9:2)

Subparagraph (b) deals with the question of the prejudicial affect of the proposed transfer of the dams. The other subparagraphs all address the question as to whether the action proposed under the Energy Companies Act is inconsistent with the principles of the Treaty of Waitangi.

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*Waitangi Tribunal, Department of Justice, Wellington.*