

Chapter 7

Legislative and Other Ancillary Claims

7.1 Claim no: 94

Claimant: Robert Agrippa Whaitiri

Claim:

Mr Whaitiri was angry that the transfer of administration of the Titi Islands from the Department of Lands and Survey to the Department of Conservation occurred without any thought given to consulting the beneficial owners of the islands (tape A1:4482).

7.1.1 The regulations were traditionally administered by the Commissioner of Crown Lands who resided in Invercargill. When the Department of Lands and Survey was disbanded in 1987, the administration of the islands was transferred to the Department of Conservation. This transfer of administration was not at issue. The fact that the people of the islands were not consulted about it is. 'Once again', Mr Whaitiri claimed, 'our people have been ignored'.

The Tribunal's conclusion

7.1.2 The Tribunal has already stated its views on the issue of consultation in the *Ngai Tahu Report 1991*. It stressed the need for a marked improvement in the processes of consultation by the Crown and local authorities with Maori, including Ngai Tahu. The Tribunal was concerned that, whilst affirmative statements of intention to consult may be expressly made and intended by representatives of Government departments, it does not always follow that these proposals are implemented. The Tribunal concluded:

If consultation offers are to be effective and meaningful there should be a clear effort made to involve Ngai Tahu in every aspect of environmental planning. It is apparent to the tribunal that statutory intervention . . . is needed to ensure Maori participation in local regional council planning as well as national environmental policies.¹

The Tribunal recommended that remedial action should be taken by the Government in the areas of:

- (a) [the] amendment [of] statutes to ensure that Maori values are made part of the criteria of assessment before the tribunal or authority involved;

Legislative and Other Ancillary Claims

- (b) proper and effective consultation with Maori before action is taken by legislation or decision by any tribunal or authority;
- (c) [the] representation of Maori on territorial authorities and national bodies; and
- (d) [the] representation of Maori before tribunals and authorities making planning and environmental changes.²

The Tribunal can understand Mr Whaitiri's concern, which echoes the views of a number of witnesses appearing before this Tribunal. It is evident that Ngai Tahu are gearing themselves to take a more active role in the consultative process. As reported elsewhere in this report, there are some encouraging signs that Crown agencies are beginning to consult with the tribe.

7.2

Claim no: 95

Claimant: Aroha Hohipera Reriti-Crofts

Claim:

Mrs Reriti-Crofts claimed that the Maori Affairs Amendment Act 1967 detrimentally affects Maori land ownership, particularly as it provides for land in multiple ownership to be willed to individuals and so pass from Maori family control (A20).

The claimant stated that Ngai Tahu are a people who believe that whanau, hapu, and iwi needs and communal interests are paramount. She claimed that the introduction of laws which force Maori people to think and behave on an individual basis is a direct attack on a philosophy that is intrinsic to the preservation of their culture, and is racism in its truest sense:

This Act, has done exactly what it was intended to do. It has continued to render us landless. 67 members of my family have already been affected by individual title holding. How many families have to be landless before justice is seen to be done? (A20:2)

In concluding, Mrs Reriti-Crofts urged that the Maori Affairs Amendment Act 1967 be repealed.

The Tribunal's conclusion

7.2.1

The Tribunal does not propose in this report to look at the operation of the 1967 amendment Act in any depth. That law has been substantially amended to provide that land can now only pass by will to persons of the same kinsgroup. Considerable new measures were also introduced to create whanau trusts so that families could have better control over their fragmented interests, and the alienation provisions were tightened up to give more effect to the principle of retaining land in Maori ownership. We consider that these measures will allay this claimant's concerns.

7.3

Claim no: 96

Claimant: Rangimarie Te Maiharoa

Claim:

Mr Te Maiharoa was concerned with the destruction of historical sites of importance to Ngai Tahu. He attributed this abuse to the authorities responsible for the areas (A19:12).

The claimant maintained that, while most historical sites would not now be in Maori ownership, Ngai Tahu still relate deeply to such places. He instanced a recent excavation of swampland, which had destroyed some 800 moa skeletons uncovered there. He asked that the Tribunal recommend to the Government that such historical sites be protected, and that the tangata whenua be represented in local government in order to ensure that their perspective is taken into account. Mr Te Maiharoa later submitted that it was not his intention to speak for Ngai Tahu when referring to the historical sites and their protection, because these predate the arrival of Ngai Tahu in the South Island and are of importance specifically to Waitaha. He also expressed dissatisfaction with the amalgamation of Waitaha and Ngai Tahu in settlements relating to the South Island (AB39).

The Tribunal's conclusion

7.3.1

The Tribunal has stated that consultation between Government bodies and Maori is the most important way to ensure Maori input into decision-making processes. As outlined above in claim 94, such consultation should take place in a Maori context, with proposals explained, examined, and discussed on tribal marae. Regarding representation, the Tribunal concluded that to a lesser extent, but important as part of the total framework, Maori must be represented on national and local bodies if the partnership principle is to be meaningful. Its recommendations to that effect have been given above. Since this grievance was presented, Te Ture Whenua Maori Act 1993 has been enacted, with new powers given to the Minister of Maori Affairs under section 339 to apply to the Maori Land Court to reserve Crown land or State-owned enterprise land when, by reason of the historical significance or spiritual or emotional association of such land to Maori, such action should be taken. Section 339 is an additional power to that given under the Reserves Act 1977 for the designation of historic and other reserves and will provide Maori people with an effective control mechanism through the appointment of trustees. It will of course be necessary for iwi to take the initiative by bringing waahi tapu to notice, if so desired, and by requesting the Minister to act.

- 7.4 Claim no: 97
Claimant: Taini Morere Koroheke Wright
Claim:

Mrs Wright claimed that the Town and Country Planning Act 1977 restricts building on inherited Maori land, and that this affects traditional Maori life, in particular the ability to live with one's hapu (L32:12).

The Tribunal's conclusion

- 7.4.1 Since this claim was presented to the Tribunal, there have been changes introduced by the passing of the Resource Management Act 1991 and Te Ture Whenua Maori Act 1993. The latter Act now provides for the issue of occupation orders which will allow Maori to build on their ancestral land. Most district councils in more recent years have taken a greater interest in the housing of Maori, particularly on their own land. Several councils have provided for Maori residential sites on papakainga as a predominant use under the planning system. We note, too, that the Resource Management Act provides for the principles of the Treaty of Waitangi to be taken into account by all persons exercising functions and powers under that Act. This would include local government, the Planning Tribunal, and members of any boards of inquiry. The Tribunal in its *Ngawha Geothermal Resource Report* (Wai 304) has recently expressed strong reservations about the effect of the words 'take into account' in section 8 of the Resource Management Act:

It is difficult to escape the conclusion that the Crown in promoting this legislation has been at pains to ensure that decision-makers are not required to act in conformity with, and apply, relevant Treaty principles. They may do so, but they are not obliged to do so.³

As a result of its inquiry into the Ngawha geothermal claim, the Tribunal has recommended that an appropriate amendment be made to the Resource Management Act 1991 to require that all persons exercising functions under the Act *shall act in a manner consistent* with the principles of the Treaty of Waitangi. We must now await and see how the Government responds to the Tribunal's recommendation. There have certainly been substantial changes in attitudes and policies over the past six years. The Tribunal is of the view that Mrs Wright's claim has largely been caught up by progressive and helpful legislative changes.

7.5 Claim no: 98

Claimants: Sandra Rose Te Hakamatua Lee (D11), Iri Barber-Sinclair (D12), Aroha Hohipera Reriti-Crofts (D13)

Claim:

Ms Lee called for a review of the Maori Incorporation Regulations 1969 and the repeal of section 48(1) of the Maori Affairs Amendment Act 1967.

7.5.1 One of the recommendations of the Commission of Inquiry into Maori Reserved Land 1975 to be put into effect was that legislation should be introduced to allow Maori landowners to take over the management of their lands. The Mawhera Incorporation was established by statute on 31 May 1976. Many of the Arahura reserves formerly under the Maori Trustee's administration have since been vested in the incorporation.

Of concern to Ms Lee is that the imposition of yet another Pakeha system on the administration of Maori land continues to undermine the traditional system of land tenure based on common ownership and Maori cultural values:

Incorporation under the Maori Incorporation Regulations 1969 does not offer [an] adequate alternative either. The provisions for share purchase and share voting have the effect of removing (if abused), the tribal voice, and the voice of Kaumatua not skilled at Corporate meeting technique or structures in favour of the more entrepreneurial type Maori. The way the regulations are laid down gives impetus to corporate wheeling and dealing too often at the expense of our cultural values. (D11:23)

Her concern was shared by others of Kati Waewae, namely Mrs Barber-Sinclair and Ms Reriti-Crofts:

Today our original shareholders (our Kaumatua) are now not the major shareholders but very much the lesser shareholders, which I believe should never have happened. (D13:2)

Mrs Barber-Sinclair has little faith in a corporate body which is governed by regulations prescribed by the Crown, and deemed it unsatisfactory that 'final decisions . . . should be determined by the share votes of a minority who have managed to acquire by purchase (in pakeha corporate style) a majority of shares' (D12:5). One bone of contention concerns the power of alienation given to the management committees of Maori incorporations by section 48(1) of the Maori Affairs Amendment Act 1967. Under this section the management committee has the power to alienate, mortgage, charge, or otherwise dispose of the incorporation's assets, the only proviso being that when the sale of land is at issue, a resolution of a general meeting of shareholders must first be made. When the majority of shares are in the hands of a few 'wheelers and dealers', such a proviso becomes meaningless. Mrs Barber-Sinclair made additional submissions to the Tribunal on 7 July 1994 referring to certain proceedings taken by her people in the Maori Land Court to restrain dealings with land vested in the Mawhera Incorporation.

Ms Lee called for a repeal of the section in order to ensure that no further alienation of Kati Waewae land occurs. She accepted the difficulties inherent in applying a form of administration that would adequately ensure that the tribal voice and ancestral taonga are protected under the Pakeha legal system. However, she claimed that as the problem is of Pakeha making, as a direct result of colonisation, the problem is for Pakeha to solve (D11:23).

The Tribunal's conclusion

7.5.2 There have been substantial changes made to the law relating to Maori incorporations by Te Ture Whenua Maori Act 1993. The kaupapa behind this legislation in respect of Maori incorporations was largely prepared and presented to the Government by the Federation of Maori Authorities. Under section 17 the Maori Land Court is required to 'protect minority interests in any land against an oppressive majority and to protect majority interests in the land against an unreasonable minority'.

Since Mrs Barber-Sinclair made her submissions, the High Court of New Zealand has given its decision on the powers of an incorporation to sell land. It has ruled that the 1953 Act, as amended in 1967, empowered an incorporation to sell land but granted it only limited power to buy land. The decision, although important in reference to powers under the 1953 Act, is now academic as Te Ture Whenua Maori Act 1993 has widened the powers of an incorporation, which can now buy and sell land.

The Tribunal is not prepared in this report to conduct a review of the incorporation provisions of the Act or the regulations. All sections of the community have been given every opportunity to express their concerns to the Government over the long period that the select committee has been considering the legislation for. It remains to be seen whether the amended legislation will meet the aspirations of the people.

7.6 **Claim no: 99**
Claimant: Taare Hikurangi Bradshaw (E8)
Claim:

Mr Bradshaw called for a complete review and restructuring of the Town and Country Planning Act 1977, with particular reference to the clear understanding of terms such as 'ancestral land', 'Maori environments', and 'significant Maori land holdings' (E8:2–3).

7.6.1 The claimant supplied his own interpretations of the above terms.

'Ancestral land': land and waters which exist as part of the physical, cultural, and spiritual environment, and significant elements of Maori environments contained within or associated with

them.

'Maori environments': embody all physical and human-related (cultural and social) systems. Some of the elements within these systems are more important than others, but all contribute in one way or another and therefore must be considered as relevant aspects to be conserved, protected, and enhanced for the future.

Mr Bradshaw called for iwi representation on planning councils in order to protect and promote Ngai Tahu cultural concerns in any future development of the environment.

He also stressed that the term 'significant Maori land holdings' must also be given a broad interpretation; the term 'significant' should refer not only to the monetary value of Maori land, but also to the cultural value associated with this land:

For instance urupa, papakainga, and other ancestral lands contain a greater value than mere economic value and their protection from detrimental forces may require greater attention than that which is normally given to land of future economic value. (E8:3)

The Tribunal's conclusion

7.6.2 The Tribunal has dealt with matters relating to town planning in other sections of this report. Again we comment that since this claim was presented there have been substantial changes made to the legislation pertaining to town and country planning. The provisions of the Resource Management Act 1991 may address some of Mr Bradshaw's concerns. Section 8 of that Act provides that all people exercising functions and powers under the Act shall take into account the principles of the Treaty of Waitangi. One of the matters of national importance, as defined in section 6(e), is:

The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

Since the *Habgood* decision of 1987, ancestral land is not confined to land still in Maori ownership.⁴

In claim 97 we referred to the Wai 304 Tribunal's recommendation regarding the amendment of section 8 of the Resource Management Act 1991. We have also dealt extensively in the *Ngai Tahu Report 1991* with the need for consultation with, and representation of, Maori on local bodies and other planning authorities. Our recommendations to this end are set out at claim 94. Section 249 of the Resource Management Act 1991 provides for the appointment of a Maori Land Court judge to act as an alternate planning judge, and section 253 of the same Act requires the Minister, when appointing persons as planning commissioners, to ensure that the Planning Tribunal has a mix of knowledge and experience in various fields, including 'matters related to the Treaty of Waitangi and kaupapa Maori'. It can be fairly said that there has been a shift in public and Government attitudes since Mr Bradshaw brought his request. It yet remains to be seen how the Government responds to the Tribunal's

recommendations.

7.7

Claim no: 100

Claimants: Emma Potiki Grooby-Phillips, Dorothy Hitchcox, Dorothy Te Mahana Walsh, Taini Morere Koroheke Wright

Claim:

A recurring and deeply-felt grievance for Ngai Tahu throughout Te Wai Pounamu is the loss of their language.

7.7.1

When the Tribunal sat at Otakou marae in November 1987 a number of women recounted aspects of their lives as children growing up in the Otakou region. These women are but a few of those Ngai Tahu who impressed upon the Tribunal how deeply they feel for the loss of their language. Their sad stories are lamentably familiar: grandparents who were not allowed to speak Maori at school; parents who thought only to encourage their children to succeed in the Pakeha world and so ceased speaking Maori in the home. The result was evident in the halting mihi of the Otakou kuia.

Mrs Te Mahana Walsh attributed this phenomenon to the lack of value that the community at large placed on things Maori and pointed out that the language has not been the only cultural taonga to have been lost. She referred to her aunt's skill at weaving, which was never passed on. Mrs Wright, another kuia from the Otakou region, mourned the loss of traditional Ngai Tahu place names.

'Te Ao Hou' for Ngai Tahu has already been outlined in chapter 18 of the *Ngai Tahu Report 1991*. Instead of thriving in the new settler economy, both claimant and Crown historians agreed that Ngai Tahu were left on the edges of the new society, often relegated to real poverty:

The loss of land and the loss of traditional resources deprived the people of an economic base for their communities which eventually forced more and more of them to migrate to where there was work. Once the strength of the communities was broken in this way, the people were exposed increasingly to the predominantly negative European attitudes to the Maori and Maori culture. Hence the loss of economic strength flowed through into loss of culture.⁵

Numerically overwhelmed very early on and marginalised on pitiful reserves, Ngai Tahu have perhaps felt the impact of assimilation the worst.

Mrs Te Mahana Walsh was 55 when she finally had the opportunity to learn her language; not from her people, but at the Wellington Polytechnic. In a moving submission, she spoke of the 'cultural battering' that her people receive from both Maori and Pakeha alike:

because we have been deprived of these basic things we are called plastic Maoris. We are

called not-Maoris.

She stated that the situation is far from being mended.

The Tribunal's conclusion

7.7.2 Similar laments can be heard the length and breadth of Aotearoa. The Tribunal has already considered a claim concerning the loss of the Maori language. In 1986 Huirangi Waikerepuru and Nga Kaiwhakapumau i te Reo Inc alleged that the Crown had failed to protect the Maori language, a breach of article 2 of the Treaty, which guarantees to Maori 'o ratou taonga katoa'. They cited certain legislation, as well as broadcasting and educational policies, as being inconsistent with the principles of the Treaty. Their claim was strongly supported from Maori quarters on every side.

The Tribunal upheld their claim, and found that Maori have been prejudicially affected by the Crown's failure to protect their language, as required by article 2 of the Treaty. It accepted that the guarantee in the Treaty requires affirmative action to protect and sustain the language, not a passive obligation to tolerate its existence, and certainly not a right to deny its use in any place. These findings were reiterated in the *Allocation of Radio Frequencies Report 1991*. A number of the Tribunal's recommendations have since been implemented by the Government.

1. *Ngai Tahu Report 1991*, para 24.4
2. *Ibid*, para 17.6.8
3. *Ngawha Geothermal Resource Report*, Wellington, Brooker and Friend Ltd, 1993, para 7.7.9
4. *RFBPS v W A Habgood Ltd* (1987) 12 NZTPA 76 (HC Admin)
5. *Ngai Tahu Report 1991*, para 18.2.1

Legislative and Other Ancillary Claims