

Ngai Tahu Land Report

01 The Claim and The Proceedings

1.1 Introduction

1.1. Introduction

We open this introductory portion of the report by asking six straightforward questions:

- 1 Who brought the claim?
- 2 What is the claim about?
- 3 Who was heard by the tribunal?
- 4 Who were the tribunal members hearing the claim?
- 5 How and where was the claim conducted?
- 6 What are the findings and recommendations of the tribunal?

We now proceed to answer those questions and as we do so, the answers lay bare the complexities of this huge claim. In opening, Mr Paul Temm, counsel for the claimants, referred to the scope of the claim by saying:

There is little doubt that the Ngai Tahu claim will be the biggest that this tribunal is ever likely to have to face. It involves almost the whole of the South Island and covers events that occurred during the course of over a hundred years. (A26:5)

The claim has indeed proved to be large. Apart from the eight very substantial claims affecting extensive areas of Ngai Tahu territory and the claim to mahinga kai, including sea fisheries, we received in total some two hundred claims concerning more specific and distinct matters. The late introduction of a substantial claim by other tribes challenging Ngai Tahu rangatiratanga over areas included in their claim and the representation of the fishing industry on fishery issues added to the variety of interlocutory issues which arose during the hearing of the claim.

That it was able to complete this inquiry is due in no small measure to the procedures the tribunal adopted. They will be explained shortly. The tribunal was also helped by the patience, tolerance and dignified attitude of the parties and their counsel. It was certainly helped by the commitment of the dedicated researchers.

The tribunal makes no apology for the length of this report. Nor does it regret that the size and number of claims have required it to adopt a markedly more clinical approach in exposition than in previous reports.

It is not only the size and number of issues that dictate the format. The tribunal has very much in mind that there should be finality of reporting on Ngai Tahu's long standing grievances. If, therefore, this account of our proceedings is somewhat detailed it is because of the need for posterity, as well as those presently concerned, to understand how this inquiry was conducted.

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01 The Claim and The Proceedings

1.2 Who Brought the Claim?

1.2. Who Brought the Claim?

The jurisdiction of the Waitangi Tribunal

1.2.1 The jurisdiction of the Waitangi Tribunal to consider grievance claims is contained in section 6 of the Treaty of Waitangi Act 1975 (herein referred to as "the Act") which reads as follows:

6 (1) 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 -

(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 regulations, order, proclamation, notice, or other statutory instrument made, issued, or given at any time on or after the 6th day of February 1840 under any ordinance or Act referred to in paragraph (a) of this subsection; or

(c) By any policy or practice (whether or not still in force) adopted by or on behalf of the Crown, or by any policy or practice proposed to be adopted by or on behalf of the Crown; or

(d) 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.

As the law presently stands, a claim must be brought by a Maori and the claim is against the Crown.

Requirements of the tribunal

1.2.2 The general duty of the tribunal is spelt out in section 6 subsections (3) and (4) of the Act which read:

6 (3) If the tribunal finds that any claim submitted to it under this section is well-founded it may, if it thinks fit having regard to all the circumstances of the case, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.

(4) A recommendation under subsection (3) of this section may be in general terms or may indicate in specific terms the action which, in the opinion of the tribunal, the Crown should take.

The tribunal is required under the Act to present its findings and recommendations to the claimant, to the Minister of Maori Affairs and other ministers with an interest in the claim, and such other persons as the tribunal thinks fit. The tribunal is also given certain powers in respect of land transferred to a state-owned enterprise by section 8A of the Act.

The claimants

1.2.3 The present claim is brought by Henare Rakiihia Tau supported by the Ngai Tahu Maori Trust Board (herein referred to as "the claimants"). The former is Maori of Ngai Tahu and deputy chairperson of the claimant trust board. The latter is a body corporate constituted under the Maori Trust Boards Act 1955.

Claimants' counsel

1.2.4 The claimants applied for and were granted legal assistance under section 7A(2) of the Act. Mr P B Temm QC of Auckland was appointed as senior counsel and with him as assisting counsel, Mr D M Palmer of Christchurch. Mr M Knowles, a barrister of Christchurch, appeared with other counsel at the first hearing only.

Waitangi Tribunal, Department of Justice, Wellington.

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01 The Claim and The Proceedings

1.3 What Is The Claim All About?

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1.3.1 The original Ngai Tahu claim dated 26 August 1986 was filed on 28 August 1986. It was followed by seven amending claims over the next two years. It is not surprising there were a large number of amending claims. The actual hearing of the claim took over two years. During that time there was a need for revision. This was not due to any omission of the claimants but rather to the necessity to define the parameters of the claim, as Parliament, the High Court and the Court of Appeal during the hearing of the Ngai Tahu claim were dealing with matters such as state-owned enterprise legislation, Maori fishing rights and Treaty of Waitangi legislation, all of which had bearing on the Ngai Tahu claim.

During this period also, negotiations were proceeding between the Crown and Maori on land and fishing rights. Ngai Tahu were very much a part of this total scene. In particular the nature and extent of the Ngai Tahu sea fisheries claim required further definition.

List of Ngai Tahu claims

1.3.2 The following is a list of Ngai Tahu claims with brief particulars of each document. The details of the claims are in appendix 3. The content of the claims will be examined shortly.

(a) General claim of 26 August 1986

This is a short document challenging the Crown's move to transfer Crown pastoral leases and Crown land generally out of Crown ownership. The claimants alleged this action was contrary to the Treaty of Waitangi. The claim did not give specific details of any other grievances. It essentially attacked government's announced proposal to transfer land interests to state-owned enterprises.

(b) Amended claim of 24 November 1986 as altered by the insertion of paragraph 4 and schedule

This amendment reiterated Ngai Tahu opposition to the transfer of land interests under the State-Owned Enterprises Bill, but it also included general complaint about actions of Crown officials in the acquisition of Ngai Tahu lands from 1844. There were specific complaints about the Crown failing to honour allocation of tenths in respect of the Otakou (Otago) purchase as well as reference to improper alienation of reserves. The claimants further sought remedies specified in a petition to Parliament dated 7 December 1979.

(c) Amended claim of 16 December 1986

In this short document the claimants specified and identified the Crown freehold and leasehold interests to which it laid claim. A lengthy schedule of these lands was attached to the claim.

(d) Amended claim of 2 June 1987

On 24 April 1987, the tribunal by memorandum of directions, required the claimants to file a more particular statement of grievances, with specific details of the acts and omissions of the Crown of which the claimants complained. This amendment set out those particulars. It referred not only to grievances arising from land purchases by the Crown but also to Ngai Tahu's loss of their mahinga kai, including sea and inland fisheries.

(e) Amended claim of 5 September 1987

In this amendment the claimants set out their grievances in respect of Crown action granting perpetual leases of Maori lands reserved from the Arahura purchase and administered under the Maori Reserved Land Act 1955.

(f) Amended claim of 25 September 1987

This document detailed the Ngai Tahu claim to sea fisheries and the terms upon which Ngai Tahu would settle with the Crown.

(g) Amended claim in respect of inland waters, 13 April 1988

This claim asserted Ngai Tahu rights to inland waters comprising lakes, rivers and streams which are within the area of the Kemp purchase. Ngai Tahu deny these inland waters were sold to the Crown and say the Crown failed in its duty to protect te tino rangatiratanga of Ngai Tahu in these inland waters.

(h) Amended claim in respect of sea fisheries, 25 June 1988

In this final amendment Ngai Tahu reformulated their marine fishing claim. The claim details the nature and extent of Ngai Tahu fishing rights and deals also with management and conservation matters. It is a comprehensive statement of the Ngai Tahu sea fisheries claim.

The "Nine Tall Trees"

1.3.3 When Mr Temm opened for the claimants at the first hearing on 17 August 1987, he explained that the claim would be presented in nine parts which he called the "Nine Tall Trees of Ngai Tahu" (A26:5). Eight of these represented the different areas of land purchased from Ngai Tahu, whilst the ninth part would deal with mahinga kai or the food resources of Ngai Tahu. The "Nine Tall Trees" are grouped below in the chronological order in which the deeds of purchase were entered into between the Crown and Ngai Tahu:

1 Otakou (Otago), 31 July 1844

2 Canterbury, 12 June 1848

3 Banks Peninsula

- (a) French purchases
- (b) Port Cooper purchase, 10 August 1849
- (c) Port Levy purchase, 25 September 1849
- (d) Akaroa purchase, 10 December 1856
- 4 Murihiku (Southland), 17 August 1853
- 5 North Canterbury, 5 February 1857
- 6 Kaikoura, 29 March 1859
- 7 Arahura, 21 May 1860
- 8 Rakiura (Stewart Island), 29 June 1864
- 9 Mahinga kai

The "branches of the Nine Tall Trees"

1.3.4 At the first hearing counsel for the claimants stated he would be presenting a number of grievances attached to each of the "Nine Tall Trees". During the hearings the detailed grievances came to be known as "branches of the Nine Tall Trees". Mr Temm also indicated that a number of smaller claims which could be described as "undergrowth claims" would also come to notice.

As the hearing proceeded it became evident to the tribunal that it was facing a very large number of claims. Near the end of the hearings and at the tribunal's request the claimants were asked to file a list of grievances grouped under each of the "Nine Tall Trees". Counsel presented the tribunal with particulars of these grievances: in all, a total of 73 alleged wrongful acts or omissions of the Crown said to be inconsistent with the principles of the Treaty of Waitangi (see appendix 4). We shall now look at some of the major issues.

It is not an easy matter to select a sampling of the major issues as each of the 73 claims in its own way is important to the whanau, hapu or iwi of Ngai Tahu who are affected by that claim. There were however some issues which were argued more extensively than others. In the following summary therefore, the tribunal has selected some of those issues which will be examined, along with all the other issues, in the remainder of this report.

These are as follows:

1 Otakou

The claimants said that when 400,000 acres of land were sold to the Crown on 31 July 1844 for the sum of £2400 the Crown failed to set aside one tenth of the 400,000 acre block as provided by the Crown's general waiver of pre-emption. The proclamation

provided that of all land sold, one tenth was to be kept for "public purposes especially for the future benefit of the aborigines".

2 Kemp

The claimants said that Ngai Tahu did not sell to the Crown as part of Kemp's purchase, any land west of the foothill ranges in an approximate line from Maungatere in the north, to Maungaatua in the south, nor did they sell Kaitorete Spit, or most of Waihora (Lake Ellesmere) and its northeastern shoreline with the adjoining wetlands. The claimants' argument on boundaries, if upheld, would mean that Ngai Tahu did not sell that land in the South Island from the Canterbury foothills up to the centre line of the alps. This large area of land, during the claim described as the "Hole in the Middle", now contains considerable hydroelectric and drainage works and includes major lakes, rivers and mountains.

The claimants also complained that the Crown failed to set aside ample reserves for their present and future needs and that their mahinga kai were not set aside and protected for their use as provided for under the purchase deed.

3 Banks Peninsula

The claimants said that they were not compensated for 30,000 acres of Ngai Tahu land awarded to the French, and further, that Ngai Tahu were denied a fair price for their land, adequate reserves and other resources for their continued sustenance and prosperity.

4 Murihiku (Southland)

The claimants said that the land west of the Waiau River (this land is now known as Southern Fiordland) was wrongfully included in the Murihiku purchase deed and was never sold. The claimants also said the Crown failed to reserve adequate land from the sale and failed to provide schools and hospitals as agreed upon.

5 North Canterbury

The claimants said that the Crown sold or leased lands to settlers before the Crown had purchased it from Ngai Tahu; the purchase was without adequate compensation and without any provision for reserves.

6 Kaikoura

The claimants said that the earlier Crown purchase of Kaikoura and Kaiapoi from Ngati Toa exerted unfair pressure on Ngai Tahu to sell on unfavourable terms. Further, that inadequate provision was made for reserves.

7 Arahura (West Coast)

The claimants said the Crown failed to permit Ngai Tahu to exclude such lands as they wished to exclude from the sale; failed to protect the right of Ngai Tahu to retain possession of pounamu (greenstone) and failed to protect Ngai Tahu by imposing perpetual leases containing unreasonable provisions over their reserve lands.

8 Rakiura (Stewart Island)

The claimants said they have been deprived of the full administration of the Titi Islands and that Whenua Hou (Codfish Island) was included in the purchase against the wishes of owners.

9 Mahinga kai

The claimants said that they have been denied access to and protection of mahinga kai and further, that the Crown has administered Ngai Tahu sea fisheries without reference to the tribe and without payment of any kind.

As stated, the foregoing grievances are a sampling only of the total of 73 grievances presented by the claimants, all of which will be dealt with in this report. The grievances we have mentioned are probably the major issues or branches of the "Nine Tall Trees" but the remainder of the 73 grievances are also important. Each grievance has been researched, presented and argued before the tribunal. Each grievance, large or small, requires the tribunal to determine whether the act or omission, policy or practice of the Crown was inconsistent with the principles of the Treaty of Waitangi. And so the "Nine Tall Trees" have 73 branches, but that is not all: as Mr Temm succinctly said at the first hearing, the "Nine Tall Trees" have also, beneath them, considerable undergrowth to which we shall now refer.

Ancillary or "undergrowth" claims

1.3.5 Counsel for the claimants explained at the outset that he would principally be concerned with the presentation of grievances in the nine groupings. But he added that at the commencement of each hearing kaumatua and other Ngai Tahu with grievances affecting their regions would present their claims under the general umbrella of the main claim. This procedure was followed and over a number of sittings throughout the various regions the tribunal heard a large number of grievances. Many of these claims concerned individuals and whanau and in some cases dealt with specific matters covered by the "Nine Tall Trees". These claims are scheduled in appendix 5. They will be dealt with in a later volume of this report.

A total of 108 claims made under this category have been received and will be reported on later. These claims cover not only a wide variety of land issues but also deal with legislation and Crown procedures. They also relate to matters such as loss of language, lack of recognition of Maori values such as place names, and various general issues such as the taking of too much land for roads and allocation of poor quality land in reserves. In addition to these 108 ancillary claims there are about 20 claims which will be dealt with in the sea fisheries report.

The number and content of the grievances as set out above will give some indication of the complex and wide ranging issues covered by the approximate total of the 200 grievances. As was said by several Ngai Tahu kaumatua at the poroporoaki following the final sitting on 10 October 1989, full opportunity was given to and taken by Ngai Tahu to tangi their grievances after a long wait of almost 150 years.

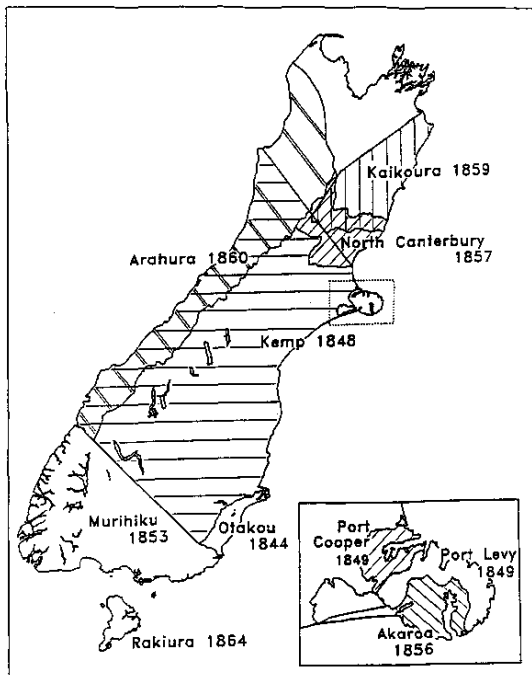


Figure 1.1: The Ngai Tahu purchases according to the deeds and deed maps. Many of these purchases overlapped each other. The Kemp purchase overlapped with the Kaikoura, North Canterbury and Arahura purchases, while the North Canterbury purchase also overlapped with Kaikoura.

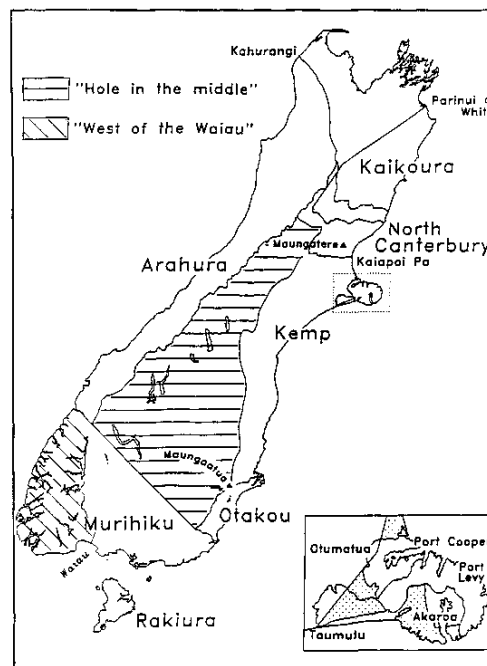


Figure 1.2: The Ngai Tahu purchases, showing the areas which the claimants maintained were not included by the tribe in the original agreements. The claimants maintained that substantial areas—the "hole in the middle", the land west of the Waiatu River in Southland and parts of Waihora and Banks Peninsula—have never been purchased by the Crown.

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01 The Claim and The Proceedings

1.4 Who Was Heard By the Tribunal?

1.4. Who Was Heard By the Tribunal?

1.4.1 The primary duty of the Waitangi Tribunal is to inquire into the claims before it, and then report its findings and recommendations. The parties to a claim are the claimants and the Crown. The Waitangi Tribunal is deemed to be a commission of inquiry under the Commission of Inquiry Act 1908. Section 4A of that Act entitles any person, who is a party to the inquiry or satisfies the tribunal that he or she has an interest in the inquiry apart from any interest in common with the public, to appear and be heard at the inquiry.

At the commencement of this inquiry several government departments and state-owned enterprise corporations, as well as other corporate bodies, farming interests and Maori organisations, sought and were granted leave to appear and be heard. In most cases counsel represented these persons and by arrangement with the tribunal, appropriate fixtures were made to allow those interests to be present before the tribunal when any particular matters affecting them were to be dealt with. On 30 June 1988 the Treaty of Waitangi (State Enterprises) Act was passed and section 4 of that Act inserted into the Treaty of Waitangi Act a new section 8C.

This provision limits the right of appearance and hearing only in respect of claims affecting land or interest in land transferred to state-owned enterprises. Persons entitled to appear under section 8C are limited to:

- (a) The claimant;
- (b) The Minister of Maori Affairs;
- (c) Any other Minister of the Crown;
- (d) Any Maori who satisfies the tribunal that he or she, or any group of Maori of which he or she is a member, has an interest in the inquiry apart from any interest in common with the public.

This particular amendment was enacted to give effect to an agreement reached between the New Zealand Maori Council and the Crown following the Court of Appeal decision of 29 June 1987. The preamble to the Treaty of Waitangi (State Enterprises) Act 1988 sets out the broad terms of that agreement. No doubt the reason for precluding state-owned enterprises and their successors in title from being heard on claims affecting land vested in them, was to limit representation and thereby avoid delays and additional legal costs.

The tribunal did not find that statutory restriction to be an impediment to ensuring that any evidence, statement, document, information or submission which any state-owned enterprise or any other person desired to place before the tribunal was in fact brought to notice. The tribunal considered that clause 6 of the second schedule to the Treaty of Waitangi Act 1975 gave sufficient power to receive all relevant material. The tribunal also had the fullest cooperation of counsel for the claimants and counsel for the Crown to allow the tribunal to receive all relevant submissions and evidence. As a result of the procedures adopted by the tribunal which will be later detailed, every possible piece of evidence affecting every type of claim which could be obtained from every source was presented. No government department, state-owned enterprise or any other corporate body or person was denied the opportunity to be heard.

Hearing of the parties

1.4.2 The claim hearings opened on 17 August 1987 and closed two and a quarter years later on 10 October 1989. The following were heard.

The claimants

1.4.3 The hearings commenced at Tuahiwi marae on 17 August 1987. Over the next ten-month period the claimants presented evidence to the tribunal at nine sittings spread over approximately ten weeks of hearings.

The tribunal generally sat in the district in which the various claims arose so that sittings took place in Kaikoura, Kaiapoi, Christchurch, Taumutu, Arowhenua, Otakou, Dunedin, Bluff, Hokitika and Greymouth.

During the presentation of the claimants' evidence, the tribunal inspected areas subject to grievance claims. An aerial inspection was made of some of the mahinga kai inland trail routes of Ngai Tahu to the west coast. Ground inspection took place of Waihora (Lake Ellesmere) and Wairewa (Lake Forsyth), areas next to Taumutu, Arowhenua, the inland lake areas including the hydro lakes and dams, Aomarama and the Wainono area. The Arahura river valley was also visited. The tribunal also went up from Invercargill to Lakes Wanaka and Hawea. At many of these places the tribunal met local farmers and heard their views.

The tribunal also visited the Canterbury and Otago museums to inspect evidentiary material and to hear expert evidence. Hearings generally opened with submissions and evidence from the local people.

By the time the claimants had completed their case on 30 June 1988 the tribunal had been given a clear indication of the substantial nature of the claim and grievances. In addition to the investigative hearings, two further sittings were held on 14 August 1989 and 9-10 October 1989 to allow Mr Temm to make final submissions and close his case.

The Crown

1.4.4 The Crown were represented throughout the whole inquiry by Mrs S E Kenderdine, senior counsel from the Crown Law Office and Mr P Blanchard of

Auckland-a senior partner in a private legal firm. Mr A Hearn QC appeared at four sittings of the tribunal and made some legal submissions. Ms A Kerr of the Crown Law Office also appeared at a hearing in Wellington on 2 August 1989.

At the opening of the Crown's response on 30 June 1988 counsel Mr Hearn started with the following quotation from the Right Honourable Mr Justice Richardson in *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 682:

Honesty of purpose calls for an honest effort to ascertain the facts and to reach an honest conclusion. (K1:1)

Mr Hearn saw that comment as a guiding standard on the way the Crown should undertake its painstaking research and conduct the Crown's response. Crown counsel went on to say that the instruction given to the large number of researchers and experts engaged in the inquiry was "to find out the truth about the matters which are in issue here and neither to hinder nor blur that truth" (K1:7). Clearly then the Crown saw its role in this claim as presenting to the tribunal every relevant fact uncovered by its researchers.

At the conclusion of the final hearing of the claim in Christchurch on 10 October 1989 the presiding officer made these observations which we incorporate in this report as they apply not only to the Crown but to researchers engaged by the claimants and also by the tribunal:

In my respectful view, Crown counsel have acted in every way to protect the Crown's position yet more importantly to uphold the honour of the Crown. The Crown did not see itself in an adversarial role, though it did not hesitate to challenge disputed grounds; it rather saw itself almost in an *amicus curiae* role which required it to bring to the tribunal's notice all discovered material and opinion whether against or for the claim. The background researching by Crown officers and professional consultants has covered every facet, every nook and cranny of not only the nine tall trees and the related claims but also the large number of small claims. The result is that the record before this tribunal contains a most comprehensive and valuable taonga that will provide future generations with a priceless data base. This has resulted from the combined efforts of the claimants, the Crown and the tribunal's research teams. They are all to be thanked and congratulated for their diligence and scholarship. Before passing from the subject of the Crown's participation in this inquiry may I venture to suggest that if those Crown officials attending the South Island land sales 140 years ago had regarded the Crown's honour in the way these proceedings have been conducted by Crown officers this tribunal would not have been here today. (Y2:10)

The Crown made very extensive submissions and called a large number of witnesses during the nine weeks of sittings spread over the twelve months needed to complete the Crown research and response to the claim. In addition, counsel Mrs Kenderdine required a further week's hearing from 11-15 September 1989 to make her final address to the tribunal.

Fishing interests

1.4.5 At the seventh hearing of the tribunal on 11 April 1988 counsel for the New Zealand Fishing Industry Board (NZFIB), Mr J L Marshall and Ms C Wainwright, and counsel for the New Zealand Fishing Industry Association (NZFIA), Mr T J Castle and Mr R B Scott, requested the board and association be joined as parties to the Ngai Tahu claim. The tribunal ruled that neither body could be accorded the status of a party to the claim but the tribunal would allow them to appear and be heard on matters relating to sea and eel fisheries. Both the NZFIB and the NZFIA took a full part in the hearing of matters relative to fisheries and at the appropriate times made submissions and called evidence in support.

Other interested bodies

1.4.6 A large number of government departments, state-owned enterprises and other organisations made written and oral submissions to the tribunal either through counsel or directly. The record of documents appended to this report as appendix 6 gives details of these matters. Reference to appendix 7 will also provide details of the hearings of the tribunal, as well as representation thereat and the names of witnesses and persons attending each respective hearing.

At the first hearing several northern South Island tribes appeared and claimed rights that raised an issue of tribal boundaries. We shall refer more fully to these claims later.

1.4.7 In all, the tribunal received a total of over 900 submissions and exhibits, some containing as many as 700 pages each. The tribunal heard, in addition to submissions from counsel, submissions and evidence from 262 individual witnesses and 26 bodies such as government departments, state-owned enterprises, local bodies, farming groups, Maori authorities and community groups. Perusal of appendix 6 will give a fuller picture of the huge volume of material which came to the tribunal in 23 weeks of hearing spread over the two and a quarter years it took to complete the inquiry.

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01 The Claim and The Proceedings

1.5 Who Were the Tribunal Members Hearing the Claim?

1.5. Who Were the Tribunal Members Hearing the Claim?

As this is a public report we have taken the slightly unusual step of appending fuller particulars and background details of the seven members in appendix 9. These details are extracted from an official brochure published by the tribunal.

The following members of the Waitangi Tribunal sat on this inquiry:

Deputy Chief Judge Ashley McHugh
Bishop Manuhuia Bennett
Sir Monita Delamere
Mrs Georgina Te Heuheu
Professor Sir Hugh Kawharu
Professor Gordon Orr
Sir Desmond Sullivan

Waitangi Tribunal, Department of Justice, Wellington.

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01 The Claim and The Proceedings

1.6 How and Where was the Claim Conducted?

1.6. How and Where was the Claim Conducted?

1.6.1 The powers and duties of the Waitangi Tribunal in relation to the conduct of proceedings before it, including admission of evidence, are set out in clauses 5-8 of the second schedule to the Treaty of Waitangi Act 1975. Although the tribunal generally may regulate its procedure in such manner as it thinks fit, it is bound to conduct its inquiry in a fair and just manner, and to ensure that parties and persons entitled to appear before it are properly notified and given full opportunity to be heard. This section deals with the actual procedures followed by the tribunal and of some modifications made to usual court procedures. Generally hearings followed the usual form in that the claimants first presented their claim and called evidence and the Crown responded and called its witnesses, followed by final addresses.

Two innovative measures were introduced by the tribunal however, in order to cope with the huge volume of evidence and number of claims and also to demarcate the principal issues. Both these steps were taken with the full assistance of counsel for both parties. There can be no doubt that not only did the procedure succeed in crystallising matters in issue, but more importantly it saved considerable time, effort and consequential cost. The first measure was the decision to formulate a list of the principal questions which appeared to need an answer at the end of the claimants' evidence. A schedule of issues was prepared by the tribunal, circulated to counsel and at a special hearing in Wellington those issues were debated and settled. The Crown then had a more formal basis on which to prepare its response and evidence.

The second measure was the appointment by the tribunal of two experts, in the persons of Professor Alan Ward and Dr George Habib, to prepare overview reports on the evidence presented on historical and fishing matters respectively. These reports were given by these two experts at the conclusion of all other evidence and were subject to examination and submission from the parties, including fishing interests. The reports provided not only valuable assessment criteria for analysis by those appearing before the tribunal, but also provided very useful appraisals for consideration by the tribunal. It is no easy matter for those engaged in a marathon hearing over 27 months, and involving a huge number of disparate claims to keep track of the principal issues. The technique employed was acceptable to all involved in this long hearing.

Pre-hearing conference

1.6.2 A pre-hearing conference was held in Wellington on 20 July 1987. Approximately 20 persons attended including 13 counsel representing the claimants, the Crown, government departments, state-owned enterprises and Federated Farmers.

A number of important matters were settled including representation, categorisation of claims, hearing dates, venue, procedure, appointment of overview researchers, notice to persons affected and public reporting of hearings.

Notice of claim

1.6.3 The tribunal, by public newspaper advertisements on 8 June and 13 June 1987, gave preliminary notification of the claim, inquiry and first sitting date, and invited all persons interested in or affected by the application to notify that interest or of any desire to be heard.

Following directions from the chairperson, written notice dated 30 June 1989 was served on the following persons advising the preliminary conference fixture, date and agenda:

- 1 Minister of Lands
- 2 Minister of Forests
- 3 Minister of Fisheries and Agriculture
- 4 Minister of Conservation
- 5 Minister of the Environment
- 6 Minister of Maori Affairs
- 7 Minister of Agriculture
- 8 Director-General, Land Corporation, Head Office, Wellington
- 9 District solicitor, Land Corporation-Mr C D Mouat, Christchurch
- 10 Weston Ward and Lascelles-Mr Palmer, Christchurch
- 11 Crown solicitor, Crown Law Office-Mrs S E Kenderdine, Wellington
- 12 Mr A Hearn OBE QC, Christchurch
- 13 Ngai Tahu Maori Trust Board, Christchurch
- 14 Federated Farmers of New Zealand-Mr E Chapman, Wellington
- 15 Mr P B Temm QC, Auckland
- 16 Mr Michael Knowles, Christchurch
- 17 Office solicitor, Royal Forest and Bird Protection Society, Wellington
- 18 Office solicitor, Ministry for the Environment, Wellington
- 19 Office solicitor, Residual Department of Lands, Wellington
- 20 Office solicitor, Ministry of Agriculture and Fisheries, Wellington
- 21 Office solicitor, Federated Mountain Clubs of New Zealand, Wellington
- 22 Office solicitor, Ministry of Conservation, Wellington
- 23 Maori Trustee, Maori Affairs Department, Wellington
- 24 Such other respondents as had notified representation
- 25 All members of the tribunal

On 7 August 1987 a press release giving details of the claim and hearing date was distributed to NZPA, The Evening Post, The Dominion, TVNZ-Christchurch, Radio Avon, Radio Ashburton, Radio 3ZB, The Press and other South Island papers. Copies of the claim were also sent to those on schedule A and B appended hereto (see appendix 7). Newspaper advertisements notifying hearings were also widely published prior to hearings.

Further notification

1.6.4 The tribunal circulated to all listed interests, a timetable of hearings so that all persons were aware of future hearing dates and matters set down thereat approximately three months in advance. Fixtures were arranged to suit the convenience of persons requiring a hearing. The general interest created by the inquiry also gave rise to considerable media coverage.

The tribunal took every step possible to notify the claim. No objections have been received from any person or organisation about inadequate or insufficient notice.

First and subsequent hearings

1.6.5 The first hearing of the claim took place at Tuahiwi marae on 17 August 1987. A full list of hearings, representation thereat and names of witnesses is set out in appendix 7.

There was a large attendance of people at the opening of the claim, so many in fact that it was necessary to move to the assembly hall at Rangiora High School after the formal opening of proceedings on Tuahiwi marae. The commencement of the hearing was delayed as the result of the unexpected arrival of a party claiming interest in the proceedings for the Interim Committee of the Kurahaupo Waka Trust (Kurahaupo-Rangitane). Matters concerning the claim of this group will be dealt with a little later in this chapter.

The chairperson of the tribunal, after the opening karakia, made the following short introductory comments:

He ra tino nui tenei ki a Ngai Tahu. Te Roopu Whakamana i Te Tiriti kua eke nei ki te whakarongo ki a koe Ngai Tahu mo nga mahi ki a koutou i mua noa atu. I ahatia i era wa, a, me pewheatia inaianei. Kua tae mai ki te whakarongo ki o auetanga. Inatata nei whakatatutia e te Kooti Piira, te tumuaki ko Ta Rapene Kuki, i ki ia ko nga taonga o Te Tiriti o Waitangi i mea; Te Maori me Te Pakeha i runga i te Tiriti kia kotahi, kia ngawari me te tino whakapono. Koia nei nga korero a Ta Rapene Kuki:

Tera whakahau ehara i te mahi iti, tino nui rawa atu te uaua. Ki te taka ki raro o nga whakahaere, ahakoa he aha te wa, te whakahau ma te Kooti kia whakahonoretia.

Na ena kupu i whakatakoto te nohotanga.

The English translation says:

This is a very important day for Ngai Tahu. This tribunal is about to hear from Ngai Tahu what has happened in the past, what was done about it and what must be done now. We are ready to listen to your grievances. Recently in the Court of Appeal decision, the president, Sir Robin Cooke, stated that the principles of the Treaty of Waitangi required the Maori and Pakeha Treaty partners to act towards each other reasonably and with the utmost good faith. Sir Robin Cooke said:

That duty is no light one. It is infinitely more than a formality. If a breach of the duty is demonstrated at any time, the duty of the court will be to insist that it be honoured.

Those words set the scene.

1.6.6 The record shows that the tribunal conducted 23 hearings spread over approximately 24 weeks. During the course of hearing, 22 memoranda of directions on interlocutory matters were issued by the tribunal and responded to by counsel. The hearings were well attended, particularly by tangata whenua. There was a sprinkling of community and church leaders attending to listen, but a significant absence of those persons and bodies who have since 1985 tended to be critical of Treaty issues, and in some cases, of the tribunal.

The tribunal held its hearings on marae and in other public conference facilities. In all, the tribunal visited and sat on seven different South Island marae. When hearing the Crown case it held hearings at a university hall in Christchurch, in the conference rooms of the Canterbury Manufacturers Association, in a secondary school assembly hall, in an Otago University common room, in conference rooms attached to motor hotels, in meeting rooms of the Department of Justice and in a rugby club hall.

The tribunal received no complaints from the public nor from any participating party or witness about the choice of hearing venue or facilities. The tribunal consulted with counsel and bodies involved to make sure all matters were in order. Proper recording and interpreting facilities were in place at all times.

Seating for all was positioned on one level in such a way that people attending formed part of the proceedings and consequently had a sense of participation in the hearings. The courteous and dignified response of all who took part or attended may have been due to this sense of involvement and informality. Considerable credit is also due to the warm hospitality the tangata whenua at the various marae extended to all their visitors. It was no easy task to provide for the long sittings and varying numbers of visitors.

Staff of the Ngai Tahu Maori Trust Board and the tribunal also performed admirable feats in setting up the hearing facilities including recording and public address systems and audio visual facilities.

At every sitting of the tribunal opportunity was provided for any person who wished to speak or make a written submission to do so. No person was denied a chance to be heard.

Procedure at hearings

Kaumatua evidence

1.6.7 During the course of the claimants' case, and by agreement with counsel, the tribunal heard the evidence of tangata whenua, including kaumatua. This evidence was generally taken on marae. By agreement with counsel, the evidence from these people was not subject to cross-examination although questions necessary to clarify matters were allowed to be put through the chairperson. It was during the hearing of

this evidence that the tribunal received details of the ancillary claims set out in appendix 5. The evidence of kaumatua and other tangata whenua was sometimes oral and recorded, sometimes in written form.

Submissions and evidence in written form

1.6.8 At the preliminary conference on 20 July 1987 it was agreed that submissions and evidence would be presented in written form. This procedure ensured that the tribunal had before it comprehensive and carefully prepared and detailed statements. The tribunal planned its sittings, and the gaps in between, to allow the parties to prepare written material. This procedure meant a great deal of pressure on counsel but they responded admirably. As a result, not only did the tribunal have the necessary written evidence of researchers and experts to allow the tribunal to work methodically through it at each hearing, but it allowed instant copies of the material to be available for all those interested persons in attendance at the inquiry. The tribunal required the presenting witness to read through the evidence so that all in attendance were able to follow and quietly absorb it. In many cases the evidence was accompanied by video presentation or explained by maps, overlays and photographs. In one case an actual demonstration was mounted to illustrate how Maori fishermen used "mark-books" to plot location of fishing grounds. The tribunal also had on display a huge map of Te Wai Pounamu with boundaries of the regions sold in the various deeds. The procedures adopted required additional time for preparation of written material, but this resulted in better opportunity for the tribunal and counsel to examine the evidence. Counsel for the parties deserve the highest praise for the most efficient way in which they marshalled and presented the evidence and submissions to the tribunal.

As stated at the conclusion of the hearing there now exists as a result of the endeavours of counsel assisted by all those experts in many varied fields, a most valuable collection of taonga that will provide a priceless data base for future generations.

Examination of witnesses and evidence

1.6.9 The tribunal decided at the outset to limit adversarial examination of witnesses, and to apply marae kawa to proceedings where desirable and as provided in clause 5(6) of the second schedule to the Act to avoid lengthy cross-examination of witnesses.

Consistent with that, but in a desire to allow some measure of flexibility in testing evidence, the tribunal allowed counsel to ask questions directed to clarify a witness' evidence. Early in the hearing it was decided to introduce another rather innovative procedure. The length and expert content of much of the evidence from historians, marine biologists, archaeologists, geographers and other experts, not to mention lawyers, presented two difficulties in cross-examination. First, the process of questioning witnesses would have taken incalculable time. Secondly, the complex nature of much of the evidence did not readily lend itself to a process of immediate questions and answers.

Mr Temm however, proposed a logical and effective solution. He suggested a procedure whereby the opposing counsel be entitled to question a witness to clarify

the evidence, and in addition be also permitted to file a written memorandum commenting on the evidence and expressing any contrary view. By this method, which was agreed to by the tribunal and other counsel, the tribunal not only avoided unnecessary and often time-wasting oral cross-examination and the unpleasantness sometimes arising therefrom, but allowed both the Crown and the claimants the necessary time for their respective researchers to give considered and researched responses. If necessary, further opportunity was given to counsel leading the evidence to respond by a short memorandum. In essence, oral cross-examination and re-examination were replaced by a written commentary and memorandum of response. The procedures worked excellently and were ideal for the circumstances attending this extensive inquiry.

In the judgment of the Court of Appeal dated 22 February 1990 in *Te Runanga o Muriwhenua Incorporated v The Attorney-General* (CA 88/89), Cooke P, at page 31 made this comment when referring to some of the difficulties in using material from the Muriwhenua Report (1988) for evidentiary purposes in the High Court:

We also agree with the High Court that different portions of the work may warrant different weighting and THAT DUE ALLOWANCE WILL BE APPROPRIATE FOR ABSENCE OF CROSS-EXAMINATION AND FEATURES MAKING IT IMPOSSIBLE TO TEST ADEQUATELY SOME OF THE BASE MATERIAL. (emphasis added)

We have already explained the procedures taken in these Ngai Tahu proceedings to replace adversarial cross-examination with a system of evidence clarification coupled with examining written commentaries. While acknowledging that the well-tryed system of cross-examination has strong merit, we respectfully consider that the procedures used in this claim, to provide opportunity for researched response, resulted in a closer and more effective examination of the lengthy and complex evidence.

We also make it clear the two overview experts, Professor Ward and Dr Habib, were cross-examined on their reports by counsel for the claimants and the Crown. In addition, the parties were able to file written commentaries on both reports.

Ward and Habib reports

1.6.10 As earlier reported, with the agreement of counsel for the claimants and Crown, the tribunal commissioned two researchers pursuant to powers given it by clause 5A of the second schedule to the Treaty of Waitangi Act 1975. Professor Alan Ward and Dr George Habib were asked to prepare overview reports on respectively, the historical and fishery evidence presented to the tribunal on the Ngai Tahu claim. They were asked:

to attend hearings, when possible, of the respective areas of study; to comment on the reliability and completeness of the evidence; to draw attention to deficiencies and omission, to draw attention to alternative interpretation, and to assist the tribunal to summarise and evaluate the data.

Alan Ward is a professor of history at the University of Newcastle, New South Wales, where he teaches Pacific history. He has carried out extensive research on the

interaction between Maori and settlers in New Zealand which is reflected in his book entitled *A Show of Justice*. He is a leading authority in the field of nineteenth century New Zealand history.

Dr George Habib holds a Doctor of Philosophy (zoology) degree from the University of Canterbury, New Zealand. Dr Habib's doctoral thesis was on the biology of red cod, one of the major marine species in the south. Dr Habib had previously been consulted by the tribunal, in particular on the Muriwhenua claim. He has worked as a scientist with the fisheries research division of MAF. He has managed an offshore fishing company and since 1984 has been running his own fisheries consultancy service.

The tribunal was indeed very well served by both these persons. Their reports were extremely helpful to the tribunal, to the claimants and Crown and to the fishing industry. The nature of their commentaries in the specialist fields meant they acted in the role of assessors, providing expertise in areas not covered by the tribunal's membership.

Counsel were given and took the opportunity to present written commentaries on matters where they disagreed, in some cases quite strongly, with the reports. The amalgam of all the material thus presented has given the tribunal a comprehensive assessment of complex factual data. We deal more specifically with the Ward and Habib reports as follows:

(a) Ward Report

This is a 427 page report in which the author looks firstly at Ngai Tahu prior to 1840 and then proceeds to examine all the Crown purchases and the aftermath of these purchases. It includes a short study of mahinga kai and a review of the Westland leases. (T1)

(b) Habib Report

The report is presented in four parts.

Part One: A report on Ngai Tahu fisheries evidence-362 pages of report and references

Part Two: A report on Ngai Tahu 1880 mahinga kai and settlements-an examination of the H K Taiaroa papers-16 pages

Part Three: An assessment of Crown evidence on mahinga kai fisheries aspects-116 pages

Part Four: A report on Crown and fishing industry evidence relative to sealing and whaling-45 pages (T4)

One indication of the value of the decision to engage independent over-viewers has been the numerous references to their respective works in the final submissions of the claimants and the Crown.

Privacy of certain evidence

1.6.11 The tribunal proceedings were conducted in public. All submissions and evidence were presented openly to the tribunal apart from a small number of mahinga kai sites, fishing mark books and privately owned charts of fishing grounds. This latter evidence was available for perusal by Crown counsel and by counsel acting for the New Zealand Fishing Industry Association and New Zealand Fisheries Board but by direction of the tribunal remains as confidential material in the record and not available for perusal by the public.

Claims by Kurahaupo-Rangitane

1.6.12 Just prior to the first hearing of the claim at Tuahiwi on 17 August 1987, the tribunal received notice that a claim was to be filed by Kurahaupo-Rangitane claiming interest in a portion of the same lands covered in the Ngai Tahu claim on the northeastern and northwestern areas of the claim. The following chronology sets out the details of that claim, the procedural steps taken by the tribunal and the outcome. Needless to say this intervening claim and others which also followed have caused considerable difficulty for the tribunal. As the following facts will show, the effect of the cross-claim was to raise dispute as to the tribal boundaries of the respective tribal groups. We now deal with the position.

(a) On 6 August 1987 Kurahaupo-Rangitane filed their claim and sought appointment of counsel. The claim referred to that part of the Kaikoura purchase deed of 29 March 1859, which lay to the north and east of the Clarence River and included the Awatere river valley from the coast to the headwaters, the inland Kaikoura range, and the coastline from White Bluffs to Cape Campbell to the Clarence rivermouth, and all forests and fisheries adjacent thereto. Kurahaupo-Rangitane stated that they occupied and enjoyed these lands, rights, and benefits on 6 February 1840, and that the Crown had wrongly deprived them of possession by purchasing from Ngai Tahu without the consent or agreement of the chiefs or people of Kurahaupo-Rangitane.

(b) By further claim dated 10 August 1987, Kurahaupo-Rangitane extended their interest to the Arahura deed of purchase dated 21 May 1860, again alleging wrongful sale of part of their land by Ngai Tahu to the Crown without their consent or agreement. The area of land claimed by Kurahaupo-Rangitane in the Arahura sale was all that portion north of the Arahura River and all forests and fisheries adjacent thereto.

(c) On 11 August 1987, the deputy chairperson issued directions referring to the two claims and seeking pre-hearing discussions between counsel for the claimants, Kurahaupo-Rangitane and Crown with a view to settling procedural differences.

(d) On 20 August 1987 Kurahaupo-Rangitane attended the first tribunal hearing. Despite opportunities given by the tribunal prior to the commencement and during the hearing at Rangiora, to see if a compromise could be reached, it was evident that the claimants and Kurahaupo-Rangitane were at issue. It was made very clear to the tribunal that the claimants strongly objected to the presence and any participation of Kurahaupo-Rangitane in the Ngai Tahu claim and its proceedings.

(e) On 25 August 1987 the deputy chairperson issued further directions setting out the issues between the claimants and Kurahaupo-Rangitane and requesting the latter to file an affidavit setting out the grounds upon which entitlement to claim was based. Mr Stevens was appointed by the tribunal as counsel for Kurahaupo-Rangitane, by way of limited appointment, to argue the jurisdictional matters arising out of their claim up to 21 September 1987, when the position was to be reviewed.

(f) On 21 September 1987 at Tuahiwi, Mr Stevens presented comprehensive written submissions which were strongly opposed by Mr Temm who said Ngai Tahu rejected the Kurahaupo-Rangitane claim.

(g) A special fixture was made for the claimants to respond at Tuahiwi on 5 November 1987. They did so. Crown counsel also made submission to the effect that it was important to have the boundary dispute resolved as it might place the Crown in double jeopardy.

(h) On 26 November 1987 the tribunal issued its decision which:

- found that Kurahaupo-Rangitane had filed a proper claim which must be heard;
- found there was a need for resolution of boundaries;
- determined for reasons set out in its decision that the Maori Land Court was a more qualified body than the Waitangi Tribunal to resolve tribal boundaries;
- recommended legislative changes to allow the tribunal to state a case to the Maori Appellate Court for a certificate from that court on the respective tribal boundaries similar to existing procedures for the High Court under section 50 of the Maori Affairs Act 1953;
- decided to continue with the Ngai Tahu claim pending outcome of any legislative change; and
- allowed Kurahaupo-Rangitane to attend and be heard until further decision of the tribunal but directed them to file an amended claim giving details of grievances alleged against the Crown.

(i) On 18 March 1988 Kurahaupo-Rangitane filed an amended claim. These amended proceedings extended their claim further south in the land subject to the claimants' application.

(j) On 23 June 1988 at Greymouth, the tribunal issued directions inviting the claimants and the Crown to make submissions on procedural questions raised in Kurahaupo-Rangitane's amended claim. They did so.

(k) On 19 September 1988 the tribunal issued its decision to proceed with the hearing.

(l) On 1 January 1989, by virtue of section 4 of the Treaty of Waitangi Act 1988, the tribunal was empowered to refer to the Maori Appellate Court by way of case stated,

any question of fact relating to rights of ownership of any land or fisheries and also any question requiring determination of Maori tribal boundaries.

(m) On 17 March 1989, a case stated was filed in the Maori Appellate Court and included in it were details of all the claims filed or anticipated.

(n) The questions put to the Maori Appellate Court required the court to determine in respect of the two areas of land purchased by the Crown from Ngai Tahu in the Arahura deed of purchase dated 21 May 1860 and the Kaikoura deed of purchase dated 29 March 1859:

1 Which Maori tribe or tribes according to customary law principles of "take" and occupation or use, had rights of ownership in respect of all or any portion of the land contained in those respective deeds at the dates of these deeds;

2 If more than one tribe held ownership rights, what area of land was subject to those rights and what were the tribal boundaries?

(o) The Maori Appellate Court has now heard the iwi and persons affected and gave its decision on 15 November 1990 as follows:

The Ngai Tahu tribe according to customary law principles of "take" and occupation or use has had the sole rights of ownership in respect of the lands comprised in both the Arahura and Kaikoura Deeds of Purchase at the respective dates of those deeds.

Having decided that Ngai Tahu only is entitled question two above does not require an answer.

(p) The decision of the Maori Appellate Court is binding on the tribunal by virtue of section 6A(6) of the Treaty of Waitangi Act 1975.

(q) The tribunal observes however that the grievance claims already filed with the tribunal from Kurahaupo-Rangitane, Mr Mervyn N Sadd, Messers R P Stafford and H M Solomon together with any other grievances affecting lands in the northern South Island beyond the determined rohe of Ngai Tahu will in due course be dealt with by the tribunal.

Sea fisheries claim

1.6.13 This portion of Ngai Tahu's "mahinga kai" grievance is one of the major claims made by the tribe and as the record shows, several amending claims were filed at various times so as to define the parameters of that claim. As indicated earlier in this chapter (1.4.5), the New Zealand Fishing Industry Board (NZFIB) and the New Zealand Fishing Industry Association (NZFIA) were actively involved in the sea fishing claim and were represented by counsel at hearings commencing 11 April 1988, 27 June 1988, 7 February 1989, 10 April 1989, 29 May 1989, 2 August 1989, and 15 September 1989 when fisheries were under inquiry.

1.6.14 On 10 November 1988 the tribunal issued a memorandum referring to the various proceedings on Maori fishing rights before the High Court. The tribunal

expressed its concern not only with the question of propriety of continuing to hear evidence, but also the broader questions of costs and convenience in having two jurisdictions contemporaneously dealing with the same, or portion of the same, issues. In this connection the tribunal noted that the High Court was being asked to look at not only the meaning and extent of section 88(2) of the Fisheries Act 1983 but also Treaty rights which formed the essential ingredient of the tribunal's jurisdiction. The High Court also had to deal with customary fishing rights and common law rights under the doctrine of aboriginal title. The tribunal invited written submissions from the parties and fishing interests as to whether the tribunal should defer further hearings on the sea fisheries claim until the High Court actions were completed.

On 16 March 1989 the tribunal directed it would continue to hear evidence and timetabled future hearing dates. Subject to later adjustments to hearing dates, the tribunal continued to hear evidence and submissions.

The Court of Appeal have adjourned the Ngai Tahu High Court action in *Ngai Tahu Maori Trust Board v Attorney General & Others* to await the report of this tribunal.

The tribunal has also noted that other actions in the High Court have been adjourned to enable the effect of measures in the Maori Fisheries Act 1989 to be determined by Maori after a settling down period.

1.6.15 The tribunal completed its formal hearings on the Ngai Tahu claim on 10 October 1989 and was in the course of preparing its report on all matters raised before it, including the sea fisheries claim, when it received an application dated 22 May 1990 from the NZFIB and the NZFIA to adduce further evidence.

Following the issue of directions from the chairperson dated 29 May 1990 a hearing was held in Wellington on 28 June 1990. On 2 July 1990 an interlocutory determination was promulgated by the tribunal with the consent of the parties and also the NZFIB and NZFIA. The tribunal has decided to reopen the inquiry into the sea fisheries claim and has notified parties that the additional hearings required will take place in due course upon completion of the tribunal's report on the main land claims of Ngai Tahu. The tribunal decided it would also defer its report on the 108 ancillary claims until it had completed the sea fisheries report. It is not expected that the additional sea fisheries evidence will be heard before February 1991. Claimants and Crown as well as the NZFIB and NZFIA have been requested to file written material with the tribunal as soon as possible. Upon receipt of the additional evidence and supporting submissions the tribunal will commission an overview research report and will thereafter proceed to complete its inquiry and report to the minister.

The tribunal considers that the procedures followed have worked well and that, notwithstanding major interlocutory matters in the form of the conflicting claims and fisheries issues, the tribunal has been able to inquire into the major grievances in a logical and time-efficient way.

Ngai Tahu Land Report

01 The Claim and The Proceedings

1.7 Remedies and Recommendations

1.7. Remedies and Recommendations

The principal purpose of this report is to issue its findings on each of the grievances. At the beginning of the inquiry counsel for the claimants and Crown agreed that the question of remedies should be dealt with at a later stage. The role of the tribunal is to determine whether, and to what extent, the Crown has acted in breach of Treaty principles and the extent to which the claimants have been detrimentally affected by any such breaches. It is then left to the parties to negotiate a settlement of any proven grievance. This procedure was followed in the Muriwhenua fisheries claim. It leaves the way open for negotiation between the tribe and the Crown and for an overall settlement by agreement between the parties based on the findings of the tribunal. It also avoids the need for the tribunal and the parties to be involved in lengthy debate on quantum of remedies before any findings are made on the existence and extent of grievances.

We do not propose therefore to deal with remedies on the major grievances in this report. However, there will be some matters upon which the tribunal should propose recommendation. These relate principally to the grievances concerning pounamu (greenstone), the West Coast perpetual leases, Waihora (Lake Ellesmere) and Wairewa (Lake Forsyth). Our findings will be made as each grievance is examined and in those cases just mentioned will be accompanied by appropriate recommendations.

Summaries of the principal grievances and the tribunal's findings are set out in the next chapter. These summaries deal with the 73 grievances or "branches" pleaded by the claimants under the "Nine Tall Trees". From chapter 6 we commence the more detailed examination of these grievances.

As stated before, the tribunal has divided its reporting process on the Ngai Tahu claim into three parts. This present report deals with the "Nine Tall Trees" or principal grievances arising out of eight South Island purchases and also includes mahinga kai. A second report will deal with the sea fisheries claim and a third report will cover the 108 ancillary claims. At the end of the hearings on 10 October 1989 a closing statement was made by the presiding officer. It forms part of this report as appendix 8. We now pass to the summaries of the main claims.