

APPENDIX II

RECORD OF INQUIRY

THE TRIBUNAL

The Tribunal membership comprised Joanne Morris (presiding), Sir John Ingram, Professor Sir Hugh Kawharu, Pamela Ringwood, and Hepora Young.*

COUNSEL

Counsel appearing were Joseph Williams and Tania Belz (for the claimants) and Helen Aikman and Dr Briar Gordon (for the Crown).

By a letter dated 10 February 1997, the claimants advised the Tribunal that they were no longer instructing Mr Williams. In a memorandum received on 8 December 1997, Frederick Thorp and Christian Whata of Russell McVeagh McKenzie Bartleet and Company advised the Tribunal that they had been appointed as solicitors to replace the solicitors and counsel who appeared on behalf of the claimants at the hearing.

THE CLAIM

The original claim (claim 1.1) was received on 11 January 1994 (see app 1). Five subsequent amendments to it were filed.

URGENCY AND PRE-HEARING CONFERENCES

Shortly after filing the claim, the claimants requested that it be heard urgently (see papers 2.1, 2.2). Amongst their reasons for seeking urgency, the claimants stated that the Crown's actions were 'significantly prejudicing [Te Whanau O Waipareira's] ability to implement the delivery of necessary Social Services Programmes to the West Auckland Community' (paper 2.1, para 6). The Tribunal's direction to register the claim issued on 26 January 1994. It was further directed that an inquiry should be conducted if the claimants were ready to proceed. In early March 1994, claimant and Crown counsel attended a pre-hearing conference in Auckland before Professor Gordon Orr and Pamela Ringwood, Tribunal members acting with the authority of the chairperson. Following this conference, the Tribunal indicated that,

* Hepora Young died on 5 December 1996, before the report was completed.

while consideration had to be given to existing Tribunal commitments, it would 'endeavour to set a date for the hearing in or about June–July 1994' (paper 2.8).

In July 1994, a Tribunal consisting of Joanne Morris (presiding), Sir John Ingram, Professor Sir Hugh Kawharu, Pamela Ringwood, and Hepora Young was constituted to hear and report on the claim (see paper 2.14). A further pre-hearing conference was held in Auckland on 1 August before Ms Morris, principally to seek agreement between the Tribunal and counsel on the ambit of the claim and the main issues involved. In this regard, the claimants undertook to file another amended statement of claim, which was received on 24 August (and which was amended further by another statement of claim received on 26 August). It was also decided that during the inquiry Peter Boag would fill an advisory role for the Tribunal and would be called as a Tribunal witness, with parties having the opportunity to cross-examine him on any evidence that he submitted (paper 2.16). The conference also considered the possibility of the Tribunal referring the claim to mediation under clause 9A of the second schedule to the Treaty of Waitangi Act 1975. The claimants, however, preferred to proceed to a hearing (papers 2.15, 2.16).

THE HEARINGS

The first of five hearings of the claim ran from 31 August to 2 September 1994 at Hoani Waititi Marae in Henderson, West Auckland. Following the powhiri, the Tribunal proceeded to hear evidence in support of the claim from members of Te Whanau o Waipareira Trust Board, kaumatua and supporters of the trust, and past and present members of its staff.

The second hearing, from 21 to 22 September 1994, again at Hoani Waititi Marae, heard the remainder of the claimant evidence and opening submissions from claimant counsel. The Tribunal also heard submissions from third parties to the claim, who sought to inform the Tribunal of their position as tangata whenua in the geographical area that Te Whanau o Waipareira services.

During the third hearing, from 31 January to 3 February 1995, held in part at Hoani Waititi Marae and in part at conference facilities at the Dalma Court Motor Inn, Henderson, the Tribunal heard submissions from Crown counsel and supporting evidence from Crown witnesses.

At a one-day hearing on 20 March 1995 at the Quality Hotel Airport, Mangere, Auckland, further cross-examination of the Crown's witnesses took place. The final hearing saw the Tribunal return to Hoani Waititi Marae for the week 24 to 28 April (with 25 April, Anzac Day, a non-sitting day). At this hearing, the cross-examination of Crown witnesses was completed, Mr Boag presented his report and was questioned on it, and counsel for both parties presented their closing addresses. Tom Parore, for Te Runanga o Ngati Whatua, was also given an opportunity to speak about the runanga's position in West Auckland, its relationship with Te Whanau o Waipareira Trust, and how it viewed the claim.

RECORD OF PROCEEDINGS**1. CLAIMS****1.1** Wai 414

Claimant: Haki Wihongi
Date: 16 December 1993
Concerning: Te Whanau o Waipareira Trust

- (a) Amendment to claim, 4 February 1994
- (b) Amendment to claim, undated (filed 28 February 1994)
- (c) Amendment to claim, undated (filed 8 March 1994)
- (d) Amendment to claim, 22 August 1994
- (e) Amendment to claim, 22 August 1994

2. PAPERS IN PROCEEDINGS

- 2.1** Memorandum from claimant counsel to the registrar requesting urgent hearing, 19 January 1994
- 2.2** Memorandum from claimants to the registrar concerning request for urgency, 20 January 1994
- 2.3** Directions from the chairperson to register claim 1.1, 26 January 1994
- 2.4** Directions from the chairperson concerning claim 1.1(a), 14 February 1994
- 2.5** Directions from the chairperson concerning claim 1.1(b), 1 March 1994
- 2.6** Memorandum concerning the claimant's position, undated (filed 4 March 1994)
- 2.7** Memorandum from the claimants concerning evidence, undated (filed 10 March 1994)
- 2.8** Directions from the Tribunal issued following a conference in Auckland on 4 March 1994, 14 March 1994
- 2.9** Memorandum from Crown counsel to Tribunal concerning issues, 15 March 1994
- 2.10** Directions from the chairperson concerning claim 1.1(c), 11 April 1994
- 2.11** Letter and attachments from claimant counsel to the registrar concerning an official information request and other matters, 28 March 1994
 - (a) Letter from Te Whanau o Waipareira Trust to the Department of Social Welfare, 25 February 1994

- (b) Letter from Te Whanau o Waipareira Trust to the Department of Social Welfare, 8 October 1993
- (c) Letter from the Community Funding Agency to Te Whanau o Waipareira Trust, 4 November 1993
- (d) Letter from the Department of Social Welfare to Te Whanau o Waipareira Trust, 28 February 1994
- 2.12 Letter from the Department of Social Welfare to Te Whanau o Waipareira Trust, 28 March 1994 (claimants)
- 2.13 Letter from the ombudsman to Te Whanau o Waipareira Trust, 8 April 1994 (claimants)
- 2.14 Directions from the chairperson to constitute the Tribunal, 22 July 1994
- 2.15 Directions from the Tribunal to convene a judicial conference, 25 July 1994
- 2.16 Directions from the Tribunal to convene the first hearing, 18 August 1994
- (a) Notification of first hearing, 12 September 1994
- 2.17 Directions from the Tribunal concerning the second hearing, 9 September 1994
- 2.18 Notification of second hearing, 12 September 1994
- 2.19 Letter from the Community Funding Agency to Te Whanau o Waipareira Trust, 24 August 1994
- 2.20 Letter from Kawerau a Maki Trust to Te Whanau o Waipareira Trust, 19 September 1994
- 2.21 Notification of third hearing, 28 September 1994
- 2.22 Memorandum of claimant counsel concerning draft list of issues, 30 September 1994
- 2.23 Letter from Crown counsel to the registrar seeking to postpone the third hearing, 17 October 1994
- 2.24 Certificate of dispatch of notice concerning postponement of third hearing, 20 October 1994
- 2.25 Notice of postponement of the third hearing and notice of resumption of that hearing, 20 October 1994
- 2.26 Letter from Crown counsel to the registrar concerning progress on resolving points at issue, 10 November 1994
- 2.27 Letter from claimant counsel to Crown counsel concerning draft issues, 21 December 1994

- 2.28** Letter from Crown counsel to claimant counsel concerning judicial conference and issues, 22 December 1994
- 2.29** Letter from claimant counsel to Crown counsel concerning issues, 9 January 1995
- 2.30** Memorandum from Crown counsel concerning Community Funding Agency witnesses, 30 January 1995
- 2.31** Direction from Tribunal to distribute document D1, 15 February 1995
- 2.32** Notification of fourth and fifth hearings, 20 February 1995
- 2.33** Letter from Crown counsel to the registrar concerning document D1 and other matters, 1 March 1995
- 2.34** Letter from Crown counsel to the registrar concerning Community Funding Agency procedures handbook, 2 March 1995
- 2.35** Letter from claimant counsel to the registrar concerning document D1, 6 March 1995
- 2.36** Letter from Crown counsel to the registrar in response to paper 2.35, 9 March 1995
- 2.37** Letter from Crown counsel to the registrar concerning a judicial conference, 13 March 1995
- 2.38** Direction from Tribunal to release document E1, 12 April 1995
- 2.39** Letter from claimant counsel to Crown counsel concerning draft list of issues, 11 April 1995
- 2.40** Letter from Crown counsel to claimant counsel concerning draft list of issues, 19 April 1995
- 2.41** Memorandum from Crown counsel concerning scope of claim, 20 April 1995
- 2.42** Direction from the Tribunal concerning statement of issues, 21 June 1995
- 2.43** Memorandum from claimant counsel in response to paper 2.42, 6 July 1995
- 2.44** Memorandum from Crown counsel in response to paper 2.42, 9 August 1995
- 2.45** Letter from claimant counsel to the registrar concerning paper 2.44, 17 August 1995
- 2.46** Letter from claimant counsel to the registrar concerning further evidence, 22 August 1995

- 2.47 Letter from Crown counsel to the registrar concerning issues, 22 August 1995
- 2.48 Letter from Tribunal to Crown counsel in response to paper 2.47, 29 August 1995
- 2.49 Letter from claimant counsel to the registrar concerning contract negotiations, 30 August 1995
- 2.50 Memorandum from claimant counsel concerning the Tribunal's request for information, 14 December 1995
- 2.51 Memorandum from Crown counsel concerning materials filed by the Crown in relation to sections 110 and 396 of the Children, Young Persons, and Their Families Act 1989, 24 January 1996
- 2.52 Letter from claimant counsel to the Tribunal opposing any use of document E14 by the Tribunal, 4 February 1997

3. RESEARCH COMMISSIONS

- 3.1 Research commission, Edward Douglas, 20 January 1995
- 3.2 Deleted

4. TRANSCRIPTS

- 4.1 Transcript of questioning of witnesses, 21–22 September 1994 (also as doc B10)
- 4.2 Transcript of questioning of witnesses, 31 January – 3 February 1995
- 4.3 Transcript of fourth hearing completed by Crown counsel, 20 March 1995
- 4.4 Transcript of Peter Boag's oral evidence
- 4.5 Transcript of Wiremu Takerei's oral evidence, 24–28 April 1995

RECORD OF DOCUMENTS

* Document held in the Waitangi Tribunal library, Waitangi Tribunal offices, third floor, 110 Featherston Street, Wellington

The name of the person or party that produced each document or set of documents in evidence appears in parentheses after the reference, except where that source is already apparent.

A. TO END OF FIRST HEARING

A1 New Zealand Community Funding Agency, *The Mission, Aims and Value Statement of the New Zealand Community Funding Agency*, January 1994

A2 Department of Social Welfare, *New Zealand Community Funding Agency: Brief for the Minister of Social Welfare*, Wellington, 1993

A3* Maori Perspective Advisory Committee, *Puao-te-Ata-tu: The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare*, Wellington, Department of Social Welfare, 1988

A4* Ministerial Review Team, *Report of the Ministerial Review Team to the Minister of Social Welfare: Review of the Children, Young Persons and their Families Act, 1989, 1992*

A5 Constitution of Te Whanau o Waipareira Charitable Trust, 30 May 1984

A6 Marea Brown, 'Te Whanau o Waipareira', background paper, 1985

A7* Report of Royal Commission on Social Policy, 1988

A8 Affidavits of evidence, 7 June 1994 (claimant counsel)

(a) Affidavit of Tai Nathan, 30 May 1994

(b) Affidavit of Robert Newson, 31 April 1994

(c) Affidavit of Connie Hanna, 22 April 1994

(d) Affidavit of Mervyn Phelps, 18 April 1994

(e) Affidavit of Albert Williams, 21 April 1994

(f) Affidavit of Mavis Tuoro, 21 April 1994

(g) Affidavit of Isabella Mano, 22 April 1994

(h) Affidavit of William Hanley, 22 April 1994

(i) Affidavit of Naida Pou, 26 April 1994

(j) Affidavit of Pat Hohepa, 26 April 1994

(k) Affidavit of Kimball Stewart, 26 April 1994

(l) Evidence of Toby Curtis, undated

(m) Affidavit of Denis Hansen, 29 April 1994

(n) Second affidavit of Haki Wihongi, 2 May 1994

- (o) Affidavit of June Mariu, 3 May 1994
- (p) Affidavit of Daryl Cross, 3 May 1994
- (q) Affidavit of Barney Tupara, 5 May 1994
- (r) Affidavit of Marea Brown, undated
- (s) Affidavit of Monty Rihari, 31 May 1994
- (t) Statement of William Hanley, 22 April 1994

A9 *Outreach* newsletters from the Community Funding Agency (claimant counsel)

- (a) December 1992
- (b) April 1993
- (c) June 1993
- (d) July 1993
- (e) October 1993

A10* New Zealand Government, *The Government's Response to the Report of the Ministerial Review Team: The Children, Young Persons, and their Families Act 1989*, Wellington, 1992

A11 Submission from Te Warena Taua, Kawerau a Maki Trust, 22 August 1994

A12 Letter from Emily Karaka, Ngai Tai ki Tamaki Trust, to the registrar, 26 August 1994

(a) Submission of Emily Karaka, Ngai Tai ki Tamaki Trust, 26 August 1994

A13 Letter from Whakataute Te Huia for Te Kawerau a Maki to the Tribunal concerning representation, 18 August 1994

A14 Submission of M Powell, Te Tinana o Ngati Whatua Nui Tonu Trust, undated (filed 31 August 1994)

A15 Evidence of June Mariu, undated (filed 31 August 1994)

A16 Evidence of Naida Pou, undated (filed 31 August 1994)

A17 Evidence of Mavis Tuoro, undated (filed 31 August 1994)

A18 Evidence of Tai Nathan, undated (filed 31 August 1994)

A19 Evidence of John Tamihere, undated (filed 1 September 1994)

A20 Evidence of Donald McConnell, undated (filed 1 September 1994)

A21 Background information on Te Whanau o Waipareira Trust, filed 1 September 1994 (claimant counsel)

- (a) *Waipareira Corporate*, pamphlet
- (b) *Te Whanau o Waipareira Trust*, pamphlet
- (c) Waipareira Training Academy, *Wai-Tech Course Directory 1994*, pamphlet
- (d) Waipareira Corporate, *Management*, pamphlet

- (e) Waipareira Corporate, *Te Whanau o Waipareira Trust 1994*, calendar, 1994
- (f) Untitled booklet about Te Whanau o Waipareira
- (g) Te Whanau o Waipareira Trust, *Chairman's Annual Report*, 1993
- (h) Te Whanau o Waipareira Trust, *Te Whanau o Waipareira Corporate Plan: June 1993 to June 1994*, Auckland, 1993

A22 Evidence of Ada Lau'ese QSM, undated (filed 1 September 1994)

A23 Submission of Ranginui Walker, 1 September 1994

A24 Evidence of Albert Williams, undated (filed 2 September 1994)

A25 Evidence of Connie Hanna, undated (filed 2 September 1994)

A26 Evidence of Susan Jeavons, undated (filed 2 September 1994)

A27 Evidence of Robert Harvey, August 1994

B. TO END OF SECOND HEARING

B1 Evidence of Whakataute Te Huia

B2 Community Funding Agency, 'Services Planning', *NZCFA Procedures Handbook* (claimant counsel)

B3 Evidence of John Henry Tamihere (claimant counsel)

B4 Evidence of Michael Timothy Tolich

(a) Contract, 17 March 1994 (claimant counsel)

B5 Evidence of Kimball Robert Stewart

(a) Supporting documents (claimant counsel)

B6 Evidence of William Patrick Hanley

(a) Supporting documents (claimant counsel)

B7 Synopsis of opening submission of claimant counsel

B8 Evidence of Pamera Te Ruihi Warner

B9 Evidence of Basil Sharp

B10 Transcript of questioning of witnesses (John Tamihere, Michael Tolich, Kimball Stewart, Patrick Hanley), 21–22 September 1994

C. TO END OF THIRD HEARING**c1** Evidence and other material (Crown counsel)

- (1) Evidence of Margaret Bazley
- (2) Evidence of Ann Clark
- (3) Evidence of Alfred Kirk
- (4) Evidence of Richard Morris
- (5) Evidence of Stephen Fogarty
- (6) Evidence of Wendy Reid
 - (a) Evidence of Te Whanau o Waipareira Trust contract reports
 - (b) Evidence of framework for Citizens Advice Bureau and Community Funding Agency contract
- (c) Letter from the Office of the Controller and Auditor-General
- (7) Evidence of Elizabeth Marsden
- (8) Evidence of Yvonne McLean
- (9) Evidence of Patrick Kelly
- (10) Evidence of Sarah Gillard
- (11) Evidence of Haahi Walker
- (12) Evidence of Christina Bettany
- (13) Evidence of Maryanne McGee
- (14) Evidence of Bill Takerei
- (15) Evidence of Ria Earp
 - (a) Attachments from Te Puni Kokiri
- (16) Evidence of Richard Morrison

c1

- (a) Appendices to document c1(15)
- (b) Supporting documents to document c1 (vol I)
- (c) Supporting documents to document c1 (vol II)

c2 Synopsis of opening submissions of Crown counsel, 31 January 1995**c3** Social Policy Agency, *Te Wakahuia o Puaote-Ata-tu*, Department of Social Welfare, 1994 (Crown counsel)**c4** Chapters from Community Funding Agency, *NZCFA Procedures Handbook* (Crown counsel)

- (a) 'Operations' (vol I)
- (b) 'Administration and Finance' (vol II)
- (c) 'Human Resources' (vol III)
- (d) 'Ministerial Communication and Public Relations' (vol IV)

c5

- (a) Social Policy Agency, *Te Wakahuia o Puaote-Ata-tu*, Department of Social Welfare, 1994 (Crown counsel)
- (b) Te Puni Kokiri, *A Guide for Departments on Consultation with Iwi*, 1993 (Crown counsel)
- (c) Department of Health, *Health and Equity: Special Report 72*, 1985 (Crown counsel)

C6 Community Funding Agency, *National Services Plan: Funding Decisions* (Crown counsel)

D. TO END OF FOURTH HEARING

D1 Edward Douglas, 'Urbanisation of the Maori Population'

D2 Memorandum from Crown counsel concerning iwi social services policy (Crown counsel)

D3 Letter from the Community Funding Agency to the Tribunal, 20 March 1995 (Crown counsel)

D4 Final page of a letter from J T Chapman, the Controller and Auditor-General, concerning POBOCS (Crown counsel)

D5 Information from the Community Funding Agency (Crown counsel)

(a) Definition of a Maori based service provider

(b) Development of the needs indicator to reflect the community's capacity to contribute

(c) Answer to question on paragraph 228 of Wendy Reid's evidence

(d) Funding to Maori and Pakeha to demonstrate how accountability under the Treaty of Waitangi is discharged

(e) Glenburn School

(f) Partial funding

(g) Tendering

(h) Roles and responsibilities of Children and Young Persons Service and the Community Funding Agency

(i) Dialogue consultants

E. TO END OF FIFTH HEARING

E1 Commentary on the Te Whanau o Waipareira claim by Peter Boag (registrar)

E2 Questions from Joanne Morris to Wiremu Takerei requesting written answers (Crown counsel)

E3 Questions from Joseph Williams to Sarah Gillard on the approval process (Crown counsel)

E4 Letter from Te Runanga o Ngati Whatua to the registrar, 21 April 1995 (Crown counsel)

E5 Article by Mason Durie

E6 Synopsis of claimant counsel's closing submissions

- E7** Synopsis of Crown counsel's closing submissions
- E8** Submissions in reply (claimant counsel)
- E9** Letter from Crown counsel to the registrar, 16 May 1995, enclosing two papers by Chief Judge Durie concerning:
- (a) The Chatham Islands claim
 - (b) Custom law
- E10** Letter from the Tribunal to Crown counsel requesting further information on evaluation and other matters, 20 June 1995
- (a) Crown counsel response to document E10, 10 July 1995
- E11** Letter from the Tribunal to claimant counsel requesting further information on contracts and other matters, 19 June 1995
- (a) Claimant counsel's response to document E11, 18 July 1995
- E12** Further data from the Community Funding Agency, 15 November 1995 (Crown counsel)
- E13** Further information from the Community Funding Agency in relation to document B3, appendix 3 (Crown counsel)
- E14** Monitoring agreement between Te Puni Kokiri and the Community Funding Agency