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The Waitangi Tribunal
Wellington

The Honourable Tau Henare
Minister of Maori Affairs

and

The Honourable Max Bradford
Minister for Tertiary Education

Parliament Buildings
Wellington

Tena korua

This report relates to a claim by three wananga Maori established as tertiary education institutions under the Education Act 1989 (as amended by the Education Amendment Act 1990). The claim concerns the failure of the Crown to recognise the right of Maori, in terms of the Treaty of Waitangi, to receive capital funding, in order to provide properly for the education of Maori through programmes, and in an environment, designed to enhance their tertiary educational opportunities.

The claim is brought by Rongo Herehere Wetere on behalf of Te Tauihu o nga Wananga Association, which represents the three claimants, Te Wananga o Raukawa, Te Wananga o Aotearoa, and Te Whare Wananga o Awanuiarangi.

Urgency was accorded the hearing of this claim because two of the wananga are at serious risk of financial collapse, owing to a lack of capital funding. It was clearly important that the Tribunal should hear this claim and report to you, as a matter of urgency, in order to prevent the collapse of an enterprise that the Tribunal is satisfied is a most significant and successful Maori educational initiative.

Heoi ano

EXECUTIVE SUMMARY

ES.1 PURPOSE

The purpose of this summary is to provide a brief overview of the claim by Rongo Herehere Wetere on behalf of Te Tauihu o nga Wananga Association. The association represents Te Wananga o Aotearoa, Te Wananga o Raukawa, and Te Whare Wananga o Awanuiarangi.

The claim concerns the funding of three tertiary education institutions (TEIS) established as wananga under the Education Act 1989 (as amended by the Education Amendment Act 1990). The claimants allege that the Crown has failed to fund wananga equitably when compared to other TEIS, such as universities, polytechnics, and colleges of education.

Although recently established as TEIS, wananga commenced their teaching programmes as education providers as follows:

- Te Wananga o Raukawa, on land leased from the Otaki and Porirua Trusts Board at Otaki, in 1981;
- Te Wananga o Aotearoa (then known as the Waipa Kokiri Arts Centre and initially funded by the Department of Maori Affairs), on a former dumpsite, in 1984; and
- Te Whare Wananga o Awanuiarangi, on a shared site at Whakatane, in 1992.

ES.2 THE CLAIMANTS' POSITION

The claimants allege that they have been prejudiced by the amendments made to the Education Act 1989 by the Education Amendment Act 1990, which do not provide for capital establishment funding for any TEI established since 1990. The three claimant wananga are the only TEIS established since 1990.

All universities, polytechnics, and colleges of education established before 1990 received establishment funding from the Government. At the time of the 1990 amendments, the Crown was committed to transferring the ownership of TEIS' assets to which it then held title to the institutions themselves. This effectively handed capital assets to pre-1990 TEIS free of charge. In accordance with the amendments, wananga, as post-1990 established TEIS, have not received any funding for establishment purposes.

The claimants allege that it is contrary to the Treaty of Waitangi that other TEIS should inherit substantial capital assets from the Crown while wananga are not entitled to anything in the way of capital establishment.

Wananga are statutorily charged with all the responsibilities of other TEIS, and have the added responsibility of carrying out teaching and research that assists the application of knowledge regarding ahuatanga Maori and tikanga Maori.

The principal area of concern that the wananga have sought a Waitangi Tribunal finding on is whether they have been disadvantaged relative to other TEIS in the area of capital funding support from the Government. Their stated position on this issue is:

- That their recent establishment placed them at a disadvantage by being accepted and registered in the mid-1990s as TEIS in terms of the Education Act.
- The 1990 amendments provided for a system of funding TEIS based on annual equivalent full-time student (EFTS) payments. With these payments came the end of capital grants (other than in 'special' circumstances). While the EFTS payments initially contained a capital component (originally calculated by the Ministry of Education as \$1030 per equivalent full-time student, or around 15 percent of an EFTS grant), there is concern about how this equates with the actual capital cost of the facilities required to operate a TEI. In the claimants' view, this component of the EFTS payments originally appears to have been set more as a maintenance grant for existing facilities than at a level that would enable new institutions to be established largely from scratch. This view is reinforced by the fact that the small number of State institutions that have had to relocate and rebuild have been awarded special capital grants to do so.
- While wananga have sought special grant assistance for capital purposes under the Government-wide capital injections policy, they have to date been unsuccessful, while a number of other institutions have succeeded in getting substantial grants for new works and rescue situations. There is concern that the implementation of the special assistance grants criteria has not been even-handed.

The claimants argue that, without immediate capital injection by the Crown, wananga will fail.

ES.3 THE CROWN'S POSITION

The substance of the Crown's position is as follows:

- The wananga have not been treated differently from other TEIS with regard to capital injections.
- There are no capital grants available for the establishment of TEIS, and since 1990, and the advent of the EFTS system, the Crown has not made any capital injections for establishment purposes.
- Prior to 1990, capital funding was by way of special capital injections, with the result that, at that time, the amount required to fund operational costs was low in comparison to that required in the post-reform EFTS capital-inclusive payments.

- Post-1990 capital injections could be paid only in special situations, and then for factors that had nothing to do with the institution's establishment.
- TEIS that received establishment grants were established under a very different funding policy regime.
- Comparisons between the way that TEIS were funded before and after 1990 are not valid because the pre- and post-1990 policies are entirely different.
- Since 1990 and the EFTS system, TEIS have been funded according to an agreed number of students (and EFTS categories) at the EFTS rates, which included provision for capital of \$1030.
- All TEIS, including wananga, have had access to the base grant of \$250,000 per annum for infrastructural purposes.
- Capital contributions from the Crown are very much the exception to the rule. The guidelines for such contributions require the support of a strategic business plan and a robust business case, which must demonstrate why capital funding outside the normal EFTS funding process is justified.

ES.4 THE PRINCIPLE OF PARTNERSHIP

Read as a whole, the Treaty of Waitangi created a partnership between the Crown and Maori. This partnership was a compact between two distinct peoples with their own culture, language, values, treasures, forms of property, and so forth. The Crown now acknowledges the concept that New Zealand is a bicultural polity and society. Biculturalism is an integral part of the overall Treaty partnership. It involves both cultures existing side by side in New Zealand, each enriching and informing the other. Under this overarching Treaty principle, therefore, the Crown's obligation to foster and support wananga is a clear and powerful one.

ES.5 THE PRINCIPLE OF RANGATIRATANGA

Rangatiratanga involves, at the very least, a concept of Maori self-management. This can be seen in many of the Tribunal's previous reports. The wananga that have been recognised as TEIS have all developed out of the efforts of Maori iwi groups to provide tertiary education to, in the first instance, their own people; in the second instance, Maori students; and, in the third instance, anyone who wishes to embrace this particular form of education. As such, the efforts of these tribal groups to create and sustain TEIS are a vital exercise of rangatiratanga. The establishment of wananga as TEIS recognised by the State represents an attempt to engage actively with the Crown in the exercise of rangatiratanga in the management of new forms of tribal and Maori education. The Crown's Treaty obligation is to foster, support, and assist these efforts. In doing so, the Crown needs to ensure that wananga are able to remain accountable to, and involved in, the communities that created them.

ES.6 THE PRINCIPLE OF ACTIVE PROTECTION

In assuming the right to govern, the Crown took upon itself the duty actively to protect Maori interests. It is clear that te reo and matauranga Maori are taonga. It is also clear that the three wananga are playing an important role in studying, transmitting, and preserving these taonga. To meet its Treaty obligation to protect these taonga, the Crown should provide wananga with adequate support and resources in an appropriate manner.

ES.7 CONCLUSION

This claim was directed at the Crown in its operation of the Education Act 1989 (as amended by the Education Amendment Act 1990). We have found that the Crown's tertiary education policies have served to disadvantage wananga and place their operations at risk. Wananga now lack a stable capital base from which to deliver their educational services. The evidence clearly shows that this has served to compromise both their financial viability and their integrity as a significant Maori educational initiative.

We therefore recommend that a one-off payment of a capital sum be made to each of the wananga sufficient to cover the following objectives:

- (a) to compensate the claimants, as a matter of urgency, for the expenditure of capital and labour that they have invested in the land, buildings, plant, and equipment on the various sites that they occupy, and on which they operate their teaching programmes and provide accommodation and other necessary amenities for their staff and students;
- (b) to make a payment to each of the claimants that will be sufficient to cover the real cost of bringing the buildings, plant, and equipment of the various establishments up to a standard comparable to other TEIs and commensurate with the needs of their existing and anticipated rolls over the next three years; and
- (c) to meet the proper costs and disbursements of the claimants incurred in the preparation and presentation of their claims.

ES.8 THE STRUCTURE OF THE REPORT

The structure of this report is as follows. Chapter 1 introduces the claim and the claimants, explains the substance of the claim, and reveals the findings and recommendations sought by the claimants. The process undertaken to hear the claim under urgency is also briefly outlined.

Chapter 2 provides a historical overview of Maori education in New Zealand since 1840. This chapter provides a brief illustration of the impact of the historical imposition of the education system upon Maori and provides the context within which wananga Maori must operate: namely, the low participation rates and

underachievement of Maori in tertiary education, and the efforts to revitalise matauranga Maori.

In chapter 3, we examine the distinct nature of the modern TEIs known as wananga. Wananga are an educational initiative developed and initiated by Maori people to address the needs of Maori but embracing the educational aspirations of all New Zealanders.

Chapter 4 charts the development and eventual implementation of the 1990 amendments to the Education Act 1989. These amendments governed the provision of tertiary education in New Zealand from 1990 and radically reformed previous tertiary education policy. It is in this chapter that we look at the particular policies, acts, and omissions of the Crown that led to Rongo Wetere bringing this claim to the Waitangi Tribunal.

In chapter 5, we discuss those principles of the Treaty of Waitangi that the Tribunal sees as being relevant to this claim.

Chapter 6 records our conclusions, a summary of our findings, and our recommendations.

In the appendices, we reproduce the statement of claim and the record of inquiry.

LIST OF ABBREVIATIONS

AJHR	<i>Appendix to the Journals of the House of Representatives</i>
app	appendix
CA	Court of Appeal
CEO	chief executive officer
doc	document
EFTS	equivalent full-time student
GST	goods and services tax
JPS	<i>Journal of the Polynesian Society</i>
ltd	limited
NZLR	<i>New Zealand Law Reports</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
p, pp	page, pages
PC	Privy Council
PSET	post-secondary educational training
pt	part
PTE	private training establishment
sec	section (of a book, report, etc)
trans	translator
TEI	tertiary education institution
UTTA	universal tertiary tuition allowance
vol	volume
Wai	Waitangi Tribunal claim