

The Honourable Parekura Horomia  
Minister of Māori Affairs



The Waitangi Tribunal  
110 Featherston Street  
WELLINGTON

and

The Honourable Margaret Wilson  
Minister in Charge of Treaty of Waitangi Negotiations

Parliament Buildings  
WELLINGTON

1 May 2003

Tēnā kōrua

We enclose the Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report. In it, we report on our urgent inquiry into the Wai 996 claim. That claim was the subject of a one-day hearing on 5 February 2003, and concerns challenges to the Crown's proposed settlement with Ngāti Tūwharetoa ki Kawerau brought on behalf of Ngāti Rangitahi, a neighbouring tribe.

The Wai 996 claimants say that their customary interests overlap with Ngāti Tūwharetoa ki Kawerau's, and that they are prejudiced by the provision of redress to Ngāti Tūwharetoa ki Kawerau in advance of any hearing of Ngāti Rangitahi's claims in the Waitangi Tribunal.

However, we accept that there is a proper basis for the Crown to settle with Ngāti Tūwharetoa ki Kawerau, and that for a fair and durable settlement with those people to be achieved, cultural redress needs to be included.

Accordingly, our focus in this inquiry is relatively narrow. Rather than the content of the settlement, we examine the Crown's policy and practice as it relates to cross-claims to cultural redress. The redress of particular concern here is various kinds of redress offered to Ngāti Tūwharetoa ki Kawerau in the vicinity of Matatā. Matatā is the modern-day centre of Ngāti Rangitahi's cultural identity. Ngāti Tūwharetoa ki Kawerau also have marae at Matatā, but the centre of their cultural identity today is Kawerau.

Examining the Crown's process of communication and consultation with Ngāti Rangitahi, we concluded that it fell short in several key ways:

- ▶ The Crown was too far along the track in its dealings with Ngāti Tūwharetoa ki Kawerau when consultations with Ngāti Rangitahi commenced. This meant that the agenda was already set, and room for manoeuvre was minimal.
- ▶ Given the constrained timeframe for the Crown's consultation with Ngāti Rangitahi, a high level of commitment to understanding and dealing with Ngāti Rangitahi's points

of view was required. The Crown did not devote the necessary resources to the Ngāti Rangitihi consultation.

- ▶ The focus of the Crown's information gathering about Ngāti Rangitihi was too narrow. It needed to encompass an understanding of the contemporary tribal landscape both surrounding and within Ngāti Rangitihi. We doubt that the officials concerned appreciated the importance of this understanding, nor conveyed it to their Minister.
- ▶ In this instance, the Crown departed from its usual policy for dealing with cross-claims. It did not require Ngāti Tūwharetoa ki Kawerau to address the cross-claimant issues with Ngāti Rangitihi, and nor did officials try to bring about agreement or understanding between the settling claimant and the cross-claimant. Instead, without providing any reasons for doing so, the Crown quickly moved to establish officials in the role of arbiters of whether Ngāti Rangitihi objections to items of redress were legitimate. In the first instance at least, the Crown's role is one of facilitation and consultation rather than arbitration. Only after conciliatory measures (such as facilitated hui, mediation, and use of a third party researcher) have been honestly tried and failed, should the Crown feel justified in standing back and simply making decisions on the merits of cross-claimants' objections to cultural redress.

The Crown's process was deficient, and breached the principles of the Treaty of Waitangi.

However, we are unable to make a clear finding as to prejudice to Ngāti Rangitihi arising from these breaches. This is because there is internal division in Ngāti Rangitihi, and we have been unable to ascertain the extent of support for this claim brought by Mr Potter and Mr Paterson. The claim purports to be on behalf of Ngāti Rangitihi, but we are not sure that it is.

In order to be prepared to recommend that the settlement with Ngāti Tūwharetoa ki Kawerau should now be halted in order for the procedural shortcomings we have identified to be remedied, we would need to be confident of a high level of support within Ngāti Rangitihi. As it is, it may be that many Ngāti Rangitihi people do not consider that they were prejudiced by the Crown's consultation process. Alternatively, they may not want the settlement with Ngāti Tūwharetoa ki Kawerau, with whom they have strong kin ties, to be halted.

Under these circumstances, we are prepared to find only that the claimants in Wai 996 have been prejudiced, and to recommend remedies that are at the lower end of the scale in terms of potential impact on tribal relations between Ngāti Rangitihi and Ngāti Tūwharetoa ki Kawerau.

Our key recommendation is that the door be left open to Ngāti Rangitihi, once its internal difficulties have been resolved, to take its place on the joint advisory committee with the Department of Conservation concerning key DOC lands near Matatā. We think that this

opportunity should be extended to Ngāti Rangitahi notwithstanding that its turn to settle with the Crown is still some years away. We think this is the least that can be done to ensure that contemporary understandings about tangata whenua status in and around Matatā are not jeopardised in a manner unfair to Ngāti Rangitahi.

‘He aute . . . He aute tāku manu tūārangi  
E rere . . . e rere atu  
I roto o te kōmurimuri  
A māna e whakaeke atu  
Ki runga ki ngā tūpari maunga  
Hui ee! Taiki ee!’

E whai ake nei ko ētahi atu kupu hei tāpiri atu ki te pūrongo whakatau a te Rōpū Whakamana i te Tiriti. E ai ki ngā tirohanga a te Rōpū Whakamana i te Tiriti e awangawanga ana i te mea kāore te rōpū i te tino mōhio mehemea kei te whai mana ngā māngai kōrero mō Ngāti Rangitahi.

Nā, ahakoa i hapa te Karauna i roto i ngā take e pā ana ki a Ngāti Rangitahi, kīhai te Rōpū Whakamana i te Tiriti i aukati i ngā whakatau a te Karauna me Ngāti Tūwharetoa ki Kawerau. Engari ko te whakahau kia maumahara te Karauna ki te āta whiriwhiri ki te tatari hoki i ngā take a ngā kaitono katoa.



Nā Judge Carrie Wainwright  
Presiding Officer