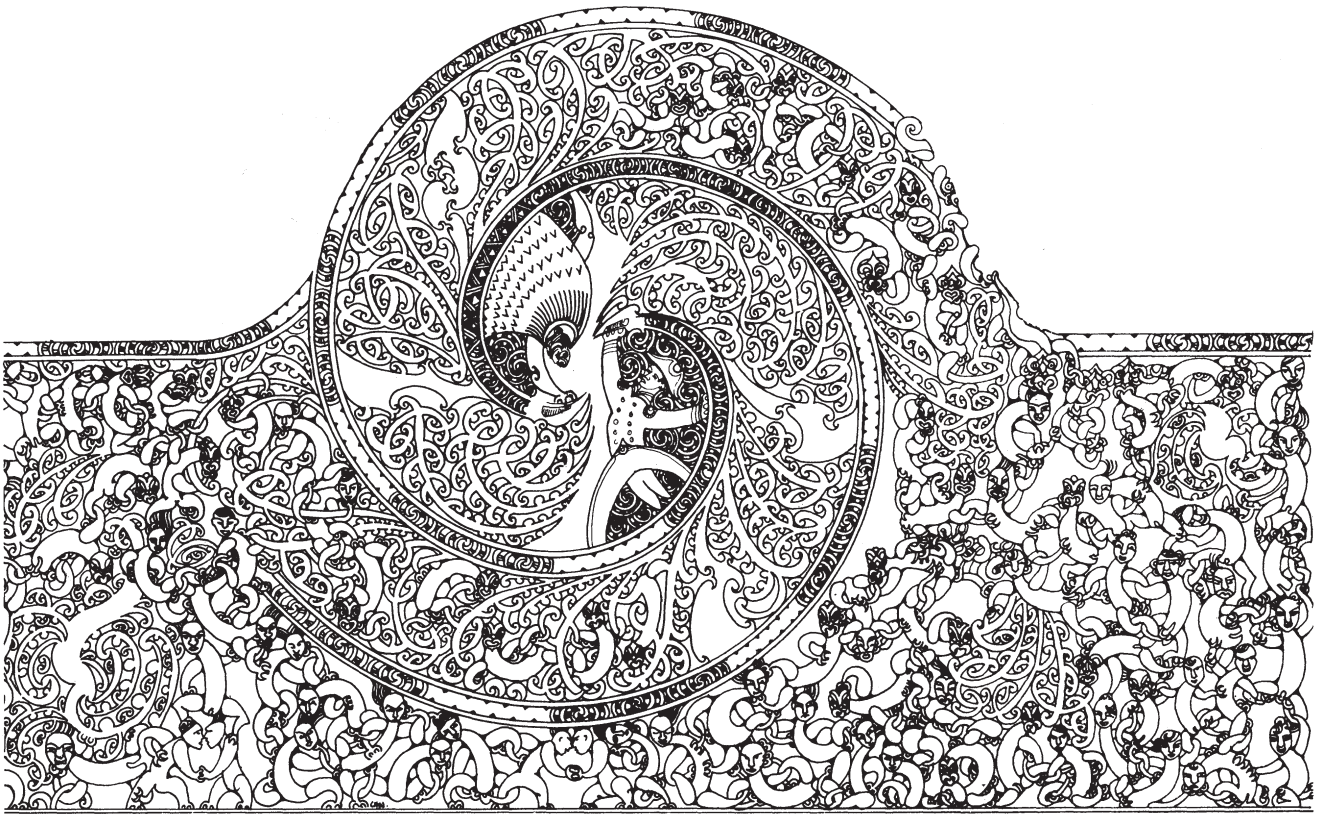
THE INTERIM REPORT OF THE WAITANGI TRIBUNAL IN RESPECT OF THE ANZTPA REGIME



WAITANGI TRIBUNAL REPORT 2006

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The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Māori and Pākehā history in New Zealand as it continuously unfolds in a pattern not yet completely known

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THE INTERIM REPORT OF THE WAITANGI TRIBUNAL IN RESPECT OF THE ANZTPA REGIME

At the beginning of this week of hearings, counsel for Ngāti Kahungunu, Mr Powell, made an application for urgent interim findings in respect of a proposal by the Crown to implement the Australia New Zealand Therapeutic Products Authority (ANZTPA) agreement. This was entered into between the governments of New Zealand and Australia. The agreement is to be implemented in New Zealand by specific legislation. We understand the legislation is imminent.

Mr Powell argued that the agreement brought within the ambit of a newly proposed regulatory authority operating throughout Australasia the rongoa interests of the Ngāti Kahungunu claimants. He argued that this had been done without proper consultation with, or the agreement of, his clients. He argued that the potential for significant prejudice to his clients was high if the agreement was implemented through legislation, as proposed. For her client, Te Waka Kai Ora (TWKO), Ms Sykes joined the application, most particularly because the TWKO claim revolves around that agreement and her clients' opposition to it. The application was adjourned to allow the Crown to seek instructions to ascertain the timing of any proposed implementation legislation.

The Tribunal was advised today by Mr Brown, for the Crown, that implementation legislation was proposed for introduction into the House on or after 10 October 2006.

Mr Brown opposed the application for urgent interim recommendations. He argued that it was the intention of the Crown to exclude rongoa Māori from the ambit of the legislation, the agreement underlying it, and the rules to be promulgated pursuant to it. The Crown stated that it is the firm intention of the New Zealand Government to exclude rongoa Māori from the ANZTPA regime. It is proposed to do this by a number of possible means: through article 9 of the agreement, which defines its ambit; through article 12, which is the exclusion clause; and/or in drafting and implementing the rules that will give body to the agreement. This is a clear statement of the Crown's intention, and it gave us some comfort.

The next question is whether, in the implementation of that intention, the expectations of Māori would be satisfied or not. Mr Brown argued that the real battle, if there is a battle at all, is in the drafting of the rules. Given the clear intention expressed by him on behalf of the New Zealand Government, that submission appears to be correct. The question for us will ultimately be whether that intention is reflected in equally clear and precise terms in the rules.

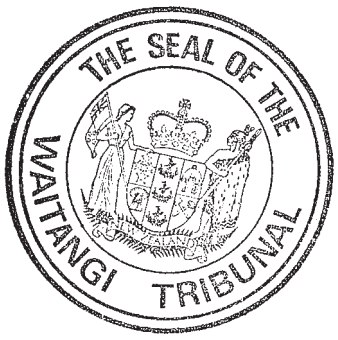
We understand that draft rules have been prepared and have been the subject of limited consultation with stakeholders. We were not provided with a copy of the rules and did not hear argument on them. It is possible that, either inadvertently or by design, the draft rules seek to incorporate into the operation of the agreement areas of rongoa Māori, the administration of rongoa Māori, and the supply of rongoa Māori, in a way opposed by Māori. We do not know whether that is the case. If it did, this would be a matter of real concern to the Tribunal. It must follow, therefore, that the Crown should consult urgently – indeed, immediately – with the Wai 262 claimants over the drafting and implementation of those rules to ensure that the clear intention of the Crown and the clear expectation of Māori are both delivered.

We recommend, therefore, that the Crown take appropriate steps to consult with all urgency.

We have considered the question of whether to recommend that the process of enacting the implementation legislation should be stopped. There is a good argument for that to happen. On balance, however, the approach we prefer is to recommend that the parties engage, as we have done, and to adjourn this application until the next hearing later this month. If we are satisfied that there has been proper good-faith engagement between the parties, then we will take no further action. If, however, no progress has been made on that front, we will hear any further submissions from the claimants in that regard.

Delivered orally by Chief Judge J V Williams on behalf of the Tribunal at Whakatu Marae, Nelson, on 8 September 2006.

Chief Judge J V Williams
Chairperson
Waitangi Tribunal



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