

IN THE WAITANGI TRIBUNAL

WAI 1040
WAI 1837

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND IN THE MATTER OF

Northland Inquiry District WAI 1040

AND IN THE MATTER OF

Te Tai Tokerau
Claim Wai 1837 by Deirdre Nehua
for and on behalf of the whanau,
hapu and iwi of Te Tai Tokerau

**BRIEF OF EVIDENCE
OF TE KAWEHAU HOSKINS
DATED: 14 October 2013**

RECEIVED

Waitangi Tribunal

8 Nov 2013

Ministry of Justice
WELLINGTON

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Introduction

1. My name is Dr. Te Kawehau Hoskins.

Ko Huruiki te maunga
Ko Whakapara te awa
Ko Ngati Hau te hapu
Ko Ngapuhi te iwi
Ko Whakapara te marae

2. I give my Whakapapa to the southern branches of the hapu of Ngati Hau from our eponymous ancestor Hautakowera but beginning from the eponymous ancestor of Ngapuhi – Rahiri.

Rahiri - Whakaruru
Kaharau
Rongomaipapa
Hautakowera
Kahukuri
Pananoa
Te Kamatarehurehu
Te Tuki
Te Karu
Haukaha
Mokonuiarangi
Taiwhanga
Mokonui
Piri
Eru Nehua – Te Tawaka - Hohaia Patuone
Ani Kaaro – Hori Strongman
Kapiri – William Hoskins
Patuone Hoskins
Te Kawehau Hoskins

3. I have a PhD from the University of Auckland, a Master of Arts (first class honours) from the University of Auckland, and a Bachelor of Arts in Maori studies & Education from the University of Auckland.
4. I am a lecturer at Te Puna Wananga, the Faculty of Education at the University of Auckland. In my research, I am primarily engaged in qualitative social and educational scholarship in the area of the politics and ethics of Indigene–Settler relations, and multicultural and bicultural education. In particular my research concerns the Treaty of Waitangi in educational governance, policy and practice that includes a focus on issues connected to School – Māori Community relationships and Māori community participation.

Executive summary

5. This submission contends that the Crown Treaty Settlement policy and process does not reflect a Treaty based approach and thereby fundamentally breaches the Treaty of Waitangi.
6. The Treaty Settlement policy and process have been completely determined and imposed by the Crown without consultation or involvement of Maori and is therefore in breach of the Treaty of Waitangi.
7. Further, Treaty settlements are determined by the Crown, ensuring the government is both judge and jury in its own case.
8. A Treaty based policy and process should be guided by the Treaty itself, and ensure a partnership approach that respects and adopts tino rangatiratanga.

Treaty settlement policy development

9. The 1994 Office of Treaty Settlements 'Crown proposals for the settlement of Treaty of Waitangi Claims' is the basis upon which the current Treaty settlement process operates. The proposals involving the 1 billion dollar fiscal cap, proposals for full and final settlements and, a direct negotiation process were unilaterally conceived, developed and imposed by the Crown.
10. Maori responses in the form of submissions, and at consultation hui around the country unanimously rejected the Crown proposals.
11. Rejection of the Crown proposals was based on:
 - a) The Crown-only (unilateral) and secretive conception and development of the proposals.
 - b) The complete lack of consultation with Maori regarding the development of any kind Treaty settlement proposals.
 - c) The complete lack of Maori involvement in the planning or design of the proposals.
 - d) The injustice of the fiscal cap – unilaterally imposed and limiting in advance of the extent of claims being fully known.
 - e) The Crown's obvious lack of commitment to partnership and a Treaty based settlement policy and process.
12. Hirangi Hui from 1995 hosted by Sir Hepi Te Heuheu and attended by up to 3,000 Maori also rejected the Crown proposals based on:

- a) Crown proposals seen as a unilateral assertion of how claims would be settled.
 - b) Crown proposals were developed without consultation or participation.
 - c) The absence of the Treaty of Waitangi from the proposal settlement principles.
 - d) Settlement principles seen to protect the government and provide assurances to the public.
 - e) Proposals did not focus on justice for claimants
13. The Crown's total denial of the huge Maori opposition (at 3 national hui at Hirangi) to the Crown's Treaty settlement policy, amounted to a fundamental breach of tino rangatiratanga and the Treaty.
 14. The introduction of Direct Negotiation as a means of settling claims was also introduced without consultation. Negotiation implies bargaining with good faith. However the Crown has determined every aspect of the 'negotiation' process such that the term is a misnomer.
 15. The Crown has set the sum of money it is prepared to spend; the Crown decides which claims it deals with and the order in which they will be dealt with; the Crown decides if and when a claimant is ready for negotiations and whether a claimant group is mandated to government requirements; and during post-settlement, the Crown must be satisfied with an Iwi's plan before it will proceed to settlement.
 16. Maori participation in Direct Negotiation is not acceptance of this Crown imposed process as Maori responses to the Crown proposals made clear. Maori have no alternative to direct negotiation if they want to settle their claims.
 17. Despite unanimous Maori rejection of the Crown proposals the government has continued them without substantial change. A 'Principles Framework' was adopted in 2000 and announcements in 2002 to streamline settlements were implemented without consultation or involvement of Maori. Further, despite the fiscal cap having disappeared from government policy statements, settlement clearly remains within that fiscal cap.

Other issues related to the Treaty Settlement Process

18. In addition to the Crown proposal settlement principles (adopted in 2000), the Crown works broadly with additional principles, these include: kawanatanga, rangatiratanga, equity, cooperation, and redress. These principles have again been adopted without

consultation or the involvement of Maori.

19. These principles use terms derived from the Maori text version of the Treaty of Waitangi such as 'kawanatanga' and 'rangatiratanga'. Against dominant Maori and historian definitions that equate rangatiratanga with self-determination if not sovereignty, the Crown has glossed rangatiratanga as 'self-management'. This reduction of the Maori text to the English text works to re-assert the Crown's assumption of unitary sovereignty and deny Maori constitutional challenges.

Te Kawehau Hoskins

Northland

14 October 2013

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned below the typed name and date.