WAITANGI TRIBUNAL

CLAIM WAI 322

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF a claim by Sandra Te Hakamatua Lee and Tuhuru Tauwhare Tainui for the descendants of Tuhuru

REPORT OF THE WAITANGI TRIBUNAL

The Tribunal has considered the submissions made by counsel today and also taken the opportunity of perusing relevant decisions of the Waitangi Tribunal.

The original statement of claim filed in these proceedings endeavoured to establish a grievance which may arise through the passing of the proposed Ngai Tahu Bill.

Following a judicial conference and in accordance with directions given by the chairperson, a further and more explicit statement of claim was filed, based upon allegations of wrongful acts on the part of the Crown in failing to provide adequate legislation to maintain the mana and status of hapu and iwi.

Although couched in general terms, most of the grievances referred to were in fact disposed of in the *Ngai Tahu Report 1991*.

Some reliance was however placed upon the repeal of the Runanga Iwi Act 1990 which took away a means of establishing iwi structures for the purposes of representation.

To that extent, this Tribunal is satisfied that a grievance may have been established, in that a right of redress has been denied claimants.

After hearing counsel for the parties today, there is a clear message that the real matter of concern in this hearing is a question of effective representation.

This Tribunal recognises that the proposed Ngai Tahu Bill is driven from a recommendation of the tribunal in the *Ngai Tahu Report 1991*, which put forward the need for some 'tribal' authority.

It is clear too that the Ngai Tahu Maori Trust Board has endeavoured to consult as widely as possible through the various hui held in October and November 1992.

The claimants, on the other hand, are concerned that they, as a hapu, may not have a voice under this proposed Bill or that their voice may be drowned in the suggested 'Papatipu runanga'.

This Tribunal is aware of evidence produced at pages 696–697 of the *Ngai Tahu Report 1991* which shows that the Crown took steps to obtain the approval of the Tuhuru descendants in respect to the proposed Arahura purchase:

> On 3 November 1858, McLean instructed Mackay Jr to effect two purchases. He was to go first to Kaikoura to settle outstanding claims of Ngai Tahu there, and once these duties were completed Mackay was told to:
>
> > have the goodness to proceed to Arahura on the west coast for the purpose of carrying out similar arrangements at that place by marking off a reserve, or reserves, not exceeding if possible, a total area of about 500 acres, which it appears, would be sufficient for the few Natives residing there.
> >
> > You will have a conveyance of all their claims duly executed by Tuhuru and the other Chiefs and people residing on the west coast, to whom you will pay on surrendering their rights, a sum of 150 Pounds, or 200 Pounds. . . .
> >
> > Great reliance is placed on your own judgment and discretion as to the carrying out of the details of this arrangement including the extent of the necessary reserves for the Natives. (A8:II:33–34)

Mackay evidently contemplated some difficulty in settling with Poutini Ngai Tahu on the niggardly basis proposed by McLean.

On 19 November 1858, he wrote to McLean seeking directions as to whether he should purchase the whole of the West Coast and advising:

> From what I recollect of the conversation I had with Tarapuhi (son of the late Tuhuru) [in 1857], I believe he claimed the whole of land from West Wanganui (Province of Nelson) to Dusky Bay, Piopiotai (Province of Otago), for this he asked 2500 Pounds; he, however, admitted that the Port Cooper Natives and Taiaroa had received payment for the west coast, and to a certain extent allowed the conquest of part of the district by the Ngatitoa tribe. I do not anticipate any difficulty in persuading them to sell the land, as they were willing to do so when I was there two years ago, but I think it probable they may wish for a larger sum of money for it than the Government are willing to give. (A8:II:34)

To the extent that there may be, subject to a hearing and right of rebuttal of evidence, some support for the claim put forward by the claimants that they have lost a previous right of representation, this is a matter which, in the opinion of this Tribunal, the Ngai Tahu negotiators should perhaps give account to in their dealings over the proposed Bill.

Perhaps the negotiators could also take on board the comments made by the tribunal at page 15, first paragraph, of *The Fisheries Settlement Report 1992* relating to the weight to be attributed to the opinion of kaumatua.

Despite the findings of the Tribunal expressed above, it is the considered and unanimous decision of this Tribunal that there are other remedies available to the claimants which should first be canvassed, before the Waitangi Tribunal should conduct an inquiry.

In the first instance, there is the right of the claimant to make submissions to the Maori Affairs Select Committee of the House which will deal with the Bill upon its

introduction to parliament. Needless to say, the Tribunal does not accept the submissions of Mr Woods that appearance before the select committee constitutes a 'petition' for the purposes of section 7(1)(c) of the Treaty of Waitangi Act 1975.

Secondly, as counsel for the Crown has stated, there is provision being made in a new section of the Maori Land Bill to provide for the Maori Land Court to determine matters of representation.

Next, there is the right of the claimants to prevail upon the House of Representatives to refer the Bill to the Waitangi Tribunal for consideration in terms of section 8 of the Act.

Finally, if all else fails, the claimants, upon the passing of the Ngai Tahu Bill, still have the right to file a grievance claim with the Tribunal if a grievance does eventuate through the application of the legislation.

Although it is the finding of this tribunal that there may be a grievance because of the repeal of the Runanga Iwi Act 1990, and possibly through the proposed Ngai Tahu Bill, the alternate remedies available, and yet to be exercised, together with the fact that the claimed potential grievances from the application of the Ngai Tahu Bill may never eventuate, mitigate against the Tribunal inquiring into the claim, which in the opinion of this Tribunal is premature.

Accordingly, in terms of section 7(1)(c) of the Treaty of Waitangi Act 1975, this tribunal declines to exercise jurisdiction to inquire into the claim.

In the *Supplementary Report on Ngai Tahu Legal Personality*, at 2.1, the Tribunal recorded:

> The Tribunal must firmly emphasise that it is not the function of this tribunal nor indeed, and with respect, the right of the Crown to determine the structure that Ngai Tahu may require for their present and future needs. That must be a matter for Ngai Tahu.

It is the fervent hope of the members of this Tribunal that even now it may be possible for the parties to have their differences resolved by way of traditional tribal process rather than the cold and impersonal forum provided by the law.

The Tribunal acknowledges the assistance of all counsel for their erudite and helpful submissions.

Dated at Wellington this 28th day of February 1993

Judge Norman Smith

Bishop Manuhuia Bennett

Mrs Mary Boyd