

IN THE WAITANGI TRIBUNAL

IN THE MATTER of the Treaty of Waitangi
Act 1975

AND

IN THE MATTER of claims by the
Honourable Matiu Rata
on behalf of himself
and of members of the
Ngati Kuri Tribe; Wiki
Karena on behalf of
himself and the members
of the Te Aupouri
Tribe; Simon Snowden on
behalf of himself and
of the Te Rarawa Tribe;
by the Reverend Maori
Marsden on behalf of
himself and the Ngai
Takato Tribe and by
MacCully Matiu on
behalf of himself and
on behalf of the Ngati
Kahu Tribe; all claims
also being on behalf of
the following groups of
Maoris namely Muriwhenua
Incorporation, the
Aupouri Trust Board,
the Ngati Kahu Trust
Board, the Parengarenga
BC3 Trust, the Runanga
of Muriwhenua
Incorporation, the Te
Rarawa Tribal Executive,
the Ngai Takato Tribal
Executive and Murimotu
II Trust

Interim Report of the Waitangi Tribunal



To: The Honourable the Minister of Maori Affairs,
Parliament Buildings,
WELLINGTON.

E te Minita, Tainui, tena koe.

We report to you from the very far North, from Te Hapua, which bounds North Cape. From here we began an Inquiry today into a series of claims from the five most northerly Tribes, seeking amongst other things the return to them of large areas of Crown Land. Though our enquiries are far from complete, Senior Counsel for the Claimants, Mr W.D. Baragwanath QC, has made certain preliminary submissions to us that compel our immediate response in the form of this Interim Report to you.

Counsel submitted that the relief sought by the Claimants is, or is likely to be, prejudiced by the enactment of the State Owned Enterprises Bill, that such prejudice is contrary to the principles of the Treaty, and that the Claimants should be granted relief in the form of some exemptions from the Bill or other amelioration of the terms of the Bill. We were informed that the Bill could pass to a Third Reading this week.

When invited to reply to Mr Baragwanath's preliminary submissions, none of the Counsel for various Government Departments who are appearing before us objected to the making of those submissions or disputed their correctness.

We are of opinion that we are able to consider the point. Section 8 of the Treaty of Waitangi Act 1975, which enables proposed legislation to be reviewed by this Tribunal on resolution of the House of Representatives, is in our view additional to, and does not derogate from the jurisdiction in section 6 to review policies or practices proposed to be adopted by the Crown, on the claim of "any Maori" likely to be prejudicially affected.

Without pre-judging in any way our finding as to whether or not all or part of the land in question should be returned, we consider the Claimants are likely to be prejudicially affected by the Bill. The policy proposed in the State Owned Enterprises Bill involves a transfer of Crown Land to the Forestry Corporation, the Land Corporation and other Corporations. It will then cease to be Crown Land. Although it appears Ministers will retain a power of direction to the proposed Corporations, that power, it seems to us, is likely to be limited and insufficiently wide to enable the return of



Crown Land pursuant to a recommendation of this Tribunal, or might otherwise involve claimants in an additional adversary. Nor, it seems, would the Bill necessarily prevent the alienation of lands that did not provide reasonable economic return.

The Treaty of Waitangi affirmed a special relationship between the Crown and the Maori people. The guarantee, in Article Two, to the undisturbed possession of lands so long as the Maori owners wish to retain the same, must be read in the context of the preamble, that the Crown is "anxious to protect their just rights and property". The element of protection was, we consider, a most compelling reason for the execution of the Treaty. We must look to the surrounding circumstances and the expectations of those very Chiefs of the far North, and Panekareao in particular, that the Governor would remain their father and protector. His descendants are now before us. The honour of the Crown is at stake. We think it inconsistent with the principles of the Treaty of Waitangi that that particular relationship of the Maori and the Crown should in any way be diminished, or even threatened with compromise. We do not think in particular that the Crown should dispose of lands that are the subject of claims and risk thereby some prejudice to the Claimants' position.

We have therefore considered the most limited relief that could be given to maintain the current position of both the Claimants and the Crown, pending the completion of our Inquiry and the preparation of our Report. It is with that perspective that we now formally recommend to you as Minister of Lands:

That the Minister of Lands, or any other Minister involved, decline to transfer to any State Owned Corporation envisaged by the Bill the Crown Lands within the traditional territories of the Ngati Kuri, Te Aupouri, Te Rarawa, Ngai Takoto, and Ngati Kahu Tribes during the currency of the Claim before us.

Having made that recommendation we do not think it would be responsible if we were not to relay to you certain other concerns raised in the course of submissions and in our deliberations, for the issue is much wider than the claim now before us.

There are some forty further claims that have been filed with the Waitangi Tribunal, some heard, some part-heard, and some yet to be heard. Many affect, or could affect, Crown Lands in the relevant Tribal areas. We are unable to be more specific



for Te Hapua facilities do not admit of ready access to official data, but we must draw your attention in particular to the claim of the Ngaitahu Maori Trust Board in respect of certain Crown Pastoral Leases in the South Island, and to the Ngati Kahu claim involving the Karikari peninsula.

You may be minded to take similar action at your own initiative in respect of those cases pending.

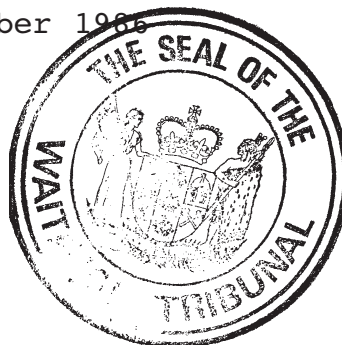
And of course there may well be further claims in future. Though we have expressly refrained from commenting on the Bill, on the grounds that we can deal with the particular case without doing so, the question remains whether the Bill itself is contrary to the principles of the Treaty, at least without some amendment that continues the responsibility of the Crown for the return of land, and appropriately restricts alienations by the envisaged corporations.

Finally, and quite apart from actual or prospective claims, and the position of those many Maori who have entered into long-term forestry and farming arrangements with the Crown, we question whether the Crown title is in all cases proven. We think it relevant that you should ask whether the Crown right to land is clearly established, before it is transferred, and the source of title publicly disclosed by reference to some conveyance, or due notice under some empowering statute. More particularly, we wonder whether some of that recorded as Crown land is not in fact customary land, or land the native title to which, or usufructuary rights thereover, have not been extinguished. We sincerely hope that the Crown's most proper desire to act with due economy should not now limit the honour of the Crown that marked its advent in Aotearoa.



These are matters on which you may wish to confer further with the Minister of Finance and the Chairman of the Cabinet Committee on State Corporations. We trust you will consider them too in your several capacities as Minister of Lands, Forests, and Maori Affairs. They constitute the message to you, at the head of the fish, from the Iwi at its tail.

DATED at Te HAPUA this 8th day of December 1988



Handwritten signature of E. Taihakurei Durie in black ink.

E. Taihakurei Durie
Chairman

Handwritten signature of Monita E. Delamere in black ink.

Monita E. Delamere

Handwritten signature of William M. Wilson in black ink.

William M. Wilson

Handwritten signature of Manuhuia A. Bennett in black ink.

Manuhuia A. Bennett

Handwritten signature of M.P. Keith Sorrenson in black ink.

M.P. Keith Sorrenson

Handwritten signature of Georgina M. Te Heuheu in black ink.

Georgina M. Te Heuheu

