

REPORT OF THE WAITANGI TRIBUNAL ON THE
TE WEEHI CLAIM TO CUSTOMARY FISHING RIGHTS

WAITANGI TRIBUNAL

WAI 15

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of claims thereunder by Tom Te Weehi and
Reremoana Hauraki, both of Christchurch

To: The Minister of Maori Affairs
Parliament Buildings
WELLINGTON

Dear Minister

1. In September 1984 the Waitangi Tribunal received a claim from Tom Te Weehi and Reremoana Hauraki, both of Christchurch, that the Fisheries Act 1983 and regulation 8(b) of the Fisheries (Amateur Fishing) Regulations 1983 were contrary to the principles of the Treaty of Waitangi in restricting them in the exercise of fishing rights said to be protected by the Treaty. They claimed to be prejudicially affected as a result, as evidenced by their prosecution for an alleged breach of the statute and regulations referred to on charges of possessing undersized paua. They claimed also that the prosecutions themselves were an act of the Crown inconsistent with the Treaty's principles.
2. On 27 May 1985 the Tribunal directed that, before deciding whether to hear the substantive claim, argument should be given on the propriety of an inquiry while the subject matter was extant the District Court in the form of criminal prosecutions.
3. The Tribunal sat at Nga Hau e Wha Marae Christchurch on Tuesday 4 June 1985. Mr MJ Knowles, as counsel for the claimants, urged the Tribunal to conduct its inquiry pointing out that the District Court had specifically adjourned the prosecutions to enable that to happen. For the Crown Mr CJ Thompson argued against that course, which, he

WAI 15

said, might prejudice the hearing of the prosecutions for either the Crown, the defendants or both.

4. After a short adjournment the Tribunal delivered its unanimous determination 'that the Tribunal is quite unwilling to deal with any matter that is still before the Courts lest in any way we embarrass the course of proceedings in the Courts.' The hearing was adjourned *sine die* to await the outcome of the court proceedings.

5. We have since been advised that the claimant, Tom Te Weehi, was subsequently convicted in the District Court but successfully appealed against that conviction in the High Court. The decision of that court (Williamson J in *Te Weehi v Regional Fisheries Officer* High Court, Christchurch, M662/85, 19 August 1986) is that Mr Te Weehi was exercising a customary fishing right; that customary fishing rights, exercised in a customary way, have been exempted from certain requirements of fishing laws; and that he did not therefore commit an offence.

6. Counsel for the claimants has now sought leave to withdraw the claim to this Tribunal. He is informed, he says, that there will be no appeal against the High Court decision. Leave to withdraw has now been granted.

7. This claim was dealt with by those whose signatures are now appended to this report, they being members at the time the Tribunal was constituted for the original hearing.

8. A copy of this report is being dispatched to both counsel.

Dated at Wellington this 6th day of May 1987

E T J Durie – Chief Judge
Chairman

Sir Graham Latimer
Member

P B Temm QC
Member