Waitangi Tribunal

Te Rōpū Whakamana i te Tiriti o Waitangi

Te Manutukutuku

Poutū-te-rangi 2003 | 57 | March 2003

Haere Rā e te Rangatira o Tūhoe

Poroporoaki ki Tā Te AhiKaiata John Joseph Turei

Haere rā e koro,
Nōu te kāhui kura, ngā taonga whakamanamana.
Nōu te mōhiotanga, hei kaitakawaenga i ngā tikanga Māori, me ngā tikanga katoa i te ao, i roto i te Rōpū Whakamana i te Tiriti o Waitangi.
Nōu anō hoki te rākau kōrero hei akiaki i te Kawana kia tika ai ā rātou mahi.
E te kaitohutohu i te reanga e piki mai ana, kua tākaia koe i te korowai o te rangimarie.
Moe mai e te rangatira, okioki atu ki te huihuinga o te kahurangi.
E kore koe te ngākau e warewaretia.

Kua hinga te totara nui i te Wao nui a Tāne. I te 19 o Kohitātea i mate a Tā Te Ahikaiata Turei. E waru tekau mā toru ngā tau o te rangatira nei nō te rohe pōtae o Tūhoe, nō Ruatoki.

I tīmata tāna mahi ki te Rōpū Whakamana i te Tiriti o Waitangi i te tau 1994. I noho rangatira ai ia i ngā pakirehua e pā ana ki ngā rohe o Kaipara, o Mohaka ki Ahuriri, me Tauranga, me te hokonga o ngā huakiwi hoki.

Nā tāna mahi wawao, kua honohono ngā rōpū whakaaro rerekē ana, whakaae ai kia tahia te tahua. He tangata hūmārire ia, he ngākau māhaki. Auē te aroha.

A great leader has fallen. Sir John, a respected Tūhoe, elder was 83 when he passed away on 19 January 2003. His tangi was held at his home marae, Rewarewa, in Ruatoki.

Sir John began working for the Waitangi Tribunal in 1994. He was of invaluable assistance in the Kaipara, Mohaka ki Ahuriri and Tauranga district inquiries, as well as the Kiwifruit Marketing inquiry.

Because of his mediating influence, different groups would come together and agree to make peace. He was a true gentleman and will be greatly missed.

At the funeral service, close friend Haare Williams recollected Sir John urging students to take on board this kōrero:

Rārangatia te kōwhaiwhai,
o te tika, te pono, me te aroha,
hei oranga mō ngā tāngata katoa.

Weave together the meaningful emblems,
Of justice, faith and love,
For the well-being of all New Zealanders.

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Ka Neke Te Maunga Taranaki

Morris Te Whiti Love Resigns as Tribunal Director

Morrie Love started as Waitangi Tribunal Director in June 1996, coming from Maruwhenua (Māori Policy Unit) in the Ministry for the Environment. His first challenge was to create a management team and structure in the Tribunal to support its needs. In 1996, the Tribunal introduced the "casebook method" of grouping claims for inquiry into districts, and assembling the historical evidence prior to the start of any hearings. The Mohaka ki Ahuriri inquiry was the first casebook inquiry, quickly followed by Tauranga Moana. This year both reports will finally be released, indicating although the casebook method made the process more effective, it took a long time to complete.

As Morrie prepares to leave, the Tribunal's new approach to district inquiries (introduced in 2000) has proven its effectiveness in the Gisborne inquiry. Enhancing the casebook method, it further streamlines the Tribunal's processes; and has required the Tribunal to again adjust its organisational structure.

The Waitangi Tribunal has come a long way since 1996. That year, Doug Graham had predicted the completion of all major claims by 2000. Conversely, the Tribunal knew it still had the majority of historical claims for most districts to research and hear. The early analysis done by Crown officials on the claims process recommended the settlement of major claims (Waikato-Tainui, Taranaki and Ngāi Tahu) before progressing to medium-sized claims and smaller claims. When the direct negotiations process was developed through the Treaty of Waitangi Policy Unit, and then the Office of Treaty Settlements, it anticipated the demise of the Tribunal. That was not to be. History has shown the usefulness of the Tribunal process was compelling in particular for claimants but also for the Crown, as a truth and reconciliation forum.

When Morrie started, 590 claims were registered since 1975 and around 175 of those had been dealt with by the Tribunal. The claims have increased each year to nearly 1050 in 2003 and of those some 310 have been dealt with by the Tribunal. In addition, another 260 claims are currently being progressed. However, of 37 inquiry districts identified, 23 are still to be inquired into, with an increased intensity of work in each (See issue 55 for more information).

Morrie leaves the Tribunal in good heart and in good hands. Several of the new Māori Land Court Judges who can preside over Tribunal inquiries, were experienced as claimant counsel in the Tribunal process prior to their appointment. "The new approach will get through the Tribunal's process faster, and the connection between that and settlement negotiations has improved, making the whole process better co-ordinated and more coherent," says Morrie.

Morrie said: "For all of the Tribunal members and staff, just managing to get claims registered, researched, inquired into, and reported on is more than a full-time job. However, the desire to increase the New Zealand public's understanding of what the claims are all about and why the Government should quickly go about settling them with adequate compensation needs to be addressed. The Tribunal's on-going contribution is through providing a wealth of information in the Tribunal's Reports as a basis for public education. Converting that material to a form for public education is a job for specialists in that field."

The full text of these reports can be found on the Tribunal's web site: www.waitangi-tribunal.govt.nz

Morrie Love has been a valuable asset to the Tribunal says Tribunal Communications Officer Victoria Brown. "He has cemented positive relationships between Treaty sector organisations and Ministers of the Crown, and ensured the success of the new approach to hearing historical claims. His dedication will allow the claims process to proceed at an increased, yet realistic pace."

Ka nui te aroha ki a koe mō tōu manaakitanga ki te kaupapa whakamana i te Tiriti o Waitangi. He ngākau māhaki koe. Mā te mahi ka puta mai te hua. Me haere tika tonu koe ki tāu mahi hou, kia puāwai anō ki tēnā wāhanga o te ao, whakahuatia. Tēnā koe e te rangatira.

Mediation Successful in Wairarapa

Whakaiho mai te korowai o te matauranga

Establishing firm leadership with a robust mandate is essential to successfully progressing Treaty of Waitangi claims through to settlement.

Parties signing the mediation heads of agreement in Masterton: L-R: Hoani Paku, Mark Chamberlain, Tom Paku, Takirirangi Smith, Bob Hill

With this in mind, Ngāi Tumapūhia-ā-rangi Hapū engaged in mediation facilitated by the Waitangi Tribunal, attempting to reconcile the issue of mandate and bring their claims into the hearing phase before the Tribunal in a unified manner.

Ngāi Tumapūhia-ā-rangi is one of the claimant groups in the Wairarapa ki Tararua inquiry district. The hapū has widespread membership throughout the North Island and in Australia. The claimants had two claims (Wai 429 and Wai 886) registered on behalf of the hapū essentially covering the same area. They have agreed to consolidate both claims under the original claim number Wai 429 and carry forward all the *take* (issues) together.

This is a major breakthrough for the hapū, who utilised the mediation effectively to put all concerns on the table and tackle them in an organised and constructive manner. Kuia Heke Morris urged the group of around 70 people to remember the whakatauki:

Ko te ihu, ko te rae,
Tikina, houhia te rongo.

With the brow of knowledge and the breath of life,
Come, let there be peace to all mankind.

The parties arrived at the agreement after exercising and demonstrating their good faith and commitment to the future development of Ngāi Tumapūhia-ā-rangi Hapū.

An interim committee, Te Rōpū Kaimahi, has been established to formulate a process for electing a new legal representative body for Ngāi Tumapūhia-ā-rangi Hapū within six months of the signing of the mediation agreement. It is expected the governing body, Te Rōpū Matua, will have the robust mandate required by the claims process to effectively participate throughout.

The hapū have also formed a new claims committee Te Rōpū Whenua, comprising three members from both former claims. They will ensure their claims are particularised and filed as required by the Tribunal under the new approach.

This agreement is of importance not just to Ngāi Tumapūhia-ā-rangi Hapū, but to the wider claimant community in the Wairarapa ki Tararua inquiry district, as the resolution ensures the agreed timetable for the whole inquiry still stands.

The mediators say the Wairarapa ki Tararua claimants are to be congratulated on being pro-active in enabling their claims to proceed to schedule by employing effective processes and filing their casebook of evidence on time.

Casebook reports can be viewed on the Tribunal's pass-worded extranet at: www.waitangi-tribunal.govt.nz/inquiries/ ●

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"This was his message for a more responsive and caring society," said Haare Williams. "One in which people respected justice and righteousness or the laws derived from God, British justice and Māori law, confirmed in the signing of the Treaty of Waitangi. Have faith in the young people of our nation to take this country to a bicultural destiny, one which respects our unique cultural and bio diversity. Have faith in our reo and our tikanga, as the means to protect our unique heritage. A spirit of generosity must prevail between the partners of the Treaty, respect for the land and the diversity in cultures."

We acknowledge the huge amount of work Sir John did for the Tribunal, both formally and informally. He was an ambassador for the Tribunal and a valued kaumātua for us all.

Previous articles on Sir John Turei can be accessed in issues 44 and 50 online at: www.waitangi-tribunal.govt.nz/news/temanutukutuku/backissues.asp ●

Ahu Moana – The Aquaculture and Marine Farming Report (Wai 953)

Urgency was granted last October to the claims hearing regarding proposed legislative changes to the current marine farming regime. Claimants represented Ngāti Kahungunu, Ngāti Whātua, Ngāi Tahu, Ngāti Koata, Ngāi Tāmanuhiri, Te Atiawa ki te Tau Ihu, and the Whakatōhea Māori Trust Board. They alleged that significant and irreversible prejudice would result to Māori if legislative changes were to proceed without specific provision for Māori interests. They claimed that interest in aquaculture or particularly marine farming, extended from their broad, ancestral relationship with the coastal marine area, and has major economic potential and importance.

Salmon farming in Queen Charlotte Sound

The tribunal, consisting of Judge Wickliffe (presiding), Dame Margaret Bazley and John Clarke heard the claims in the face of the Bill being introduced into Parliament in mid-November. In the event, the Bill was delayed, and a full report of the issues has been produced as a toolkit for further consultation between Māori and the Crown, and the development of appropriate mechanisms.

The tribunal found that the Crown had breached the principles of the Treaty of Waitangi by failing to actively protect the interests of Māori guaranteed under Article Two of the Treaty. "Without exception they [iwi] regard the coastal marine area as a taonga," said the tribunal.

The proposed system of establishing Aquaculture Management Areas (AMAS) which would have space tendered out by regional councils was combined with a two-year moratorium on the granting of resource consents for any new ventures. The tribunal found that: "The current indications are that the creation of AMAS, combined with the prohibition on marine farming outside the AMAS, may amount to a significant allocation of coastal space for that purpose and an alienation from Māori spanning in people terms one to two generations."

Considering nearly one-third of the world's fish and shellfish is produced by aquaculture and a predicted 50 per cent increase in the next 20 years, the claims of prejudice from the proposed legislative changes were upheld.

The tribunal also found there had been no consultation on the reform package as a whole. It agreed the Crown has a duty to fully investigate what the Māori interests in aquaculture and marine farming are and how the Crown's actions might impinge on Māori before policies and practices are finalised. In response to Māori concerns there was no adequate mechanism for ensuring the Crown can provide redress in the future, the tribunal stated that: "The Crown has a duty to…at least consult with Māori on how best to preserve capacity to provide for that interest until Treaty parameters are ascertained. We do not accept that the Crown's rationale for rejecting the other options, such as setting aside a percentage of AMAS for providing for Māori interests in marine farming are convincing, since the decisions were made unilaterally without adequate consultation with Māori."

The recommendations focus on effectively utilising the delay before the introduction of the Bill to establish a mechanism for consultation and negotiation with Māori. The tribunal recommended the process be facilitated by Te Ohu Kaimoana; and should address the issues of investigating the nature and extent of Māori interest in marine farming; and how to best protect that interest and ensure appropriate participation, as the tribunal had already identified that: "Aquaculture is seen by many iwi as an area where continued participation and development is desirable."

The Report will be available from Legislation Direct in late-March 2003, and available on the Tribunal's passworded extranet accessible through inquiries: www.waitangi-tribunal.govt.nz/ ●

Hauraki Inquiry Completed (Wai 686)

Over 50 claims have been heard during the 27 weeks of hearing in the Hauraki inquiry district. Hearing of evidence was completed in November 2002 and the report is in the early stages of being drafted.

Hauraki claims include issues relating to the discovery and extraction of gold. Most of these came before the tribunal for the first time and many are unique to Hauraki. The fact that the gold was found in quartz rock (rather than as alluvial gold) meant mining was not merely in the form of an initial rush but extended over a long period, with mining companies investing significant capital. Treaty issues arising include the ownership of gold, the nature or the agreements reached between Māori and the Crown for the mining of gold, the returns to Māori from these agreements relative to the costs involved, and the Crown's management of the goldfields including payments due to Māori.

Closely related to these issues is the Crown's purchase of the majority of Hauraki lands, including gold-bearing lands, under rights of pre-emption established through the Immigration and Public Works legislations. Other important claims in Hauraki relate to the tidal foreshores; traditionally these foreshores in the Hauraki Gulf – especially at Thames and Coromandel – were very important fishing and birding grounds for local hapū. Drainage of rivers and swamps also affected the economy of Hauraki peoples.

Another issue for consideration surrounds how Hauraki iwi were caught up in the Crown's conflict with the Kingitanga, and the resulting raupatu of Hauraki lands.

Full submissions have been made by claimants and the Crown on these and other matters, making Hauraki one of the most complex areas for the Tribunal's consideration. ●

Tarawera Forest Report

The Tarawera Forest Report was released to claimants and the Crown in late-March 2003. It reports on claims relating to the development, finalisation and implementation in the 1960s of the Tarawera Forest joint venture scheme, a tripartite forestry scheme involving private enterprise (originally Tasman Pulp and Paper Company Limited), the Crown and several thousand Māori.

The primary claim (Wai 411) was originally part of the Ngāti Awa/Eastern Bay of Plenty inquiry but because of its non-tribal and recent nature, was severed to be heard separately in 2000 by the Tribunal consisting of Joanne Morris (presiding), Keita Walker, Professor Wharehuia Milroy and John Baird.

The Wai 411 claimants are former owners of the 38,000 acres of Māori land that was contributed to the scheme in return for a 10.8 per cent stake in the forestry development company Tarawera Forests Limited (TFL). The Māori shareholding in TFL is administered by Māori Investments Ltd (MIL), a holding company created by legislation so that the many and various interests in the Māori land could be converted to interests in TFL. The other owners of TFL are the Crown (6.7 per cent) and private enterprise (82.5 per cent). The Wai 411 claimants were supported by the Ngāti Awa (Wai 46) claimants, who have a specific interest in Putauaki maunga (Mount Edgecumbe) which is included in the forest land now owned by TFL, and one individual claimant.

The claimants asserted that they would have preferred to lease the land rather than lose title to it, and this would have been possible if the Crown had upheld its duty actively to protect Māori interests.

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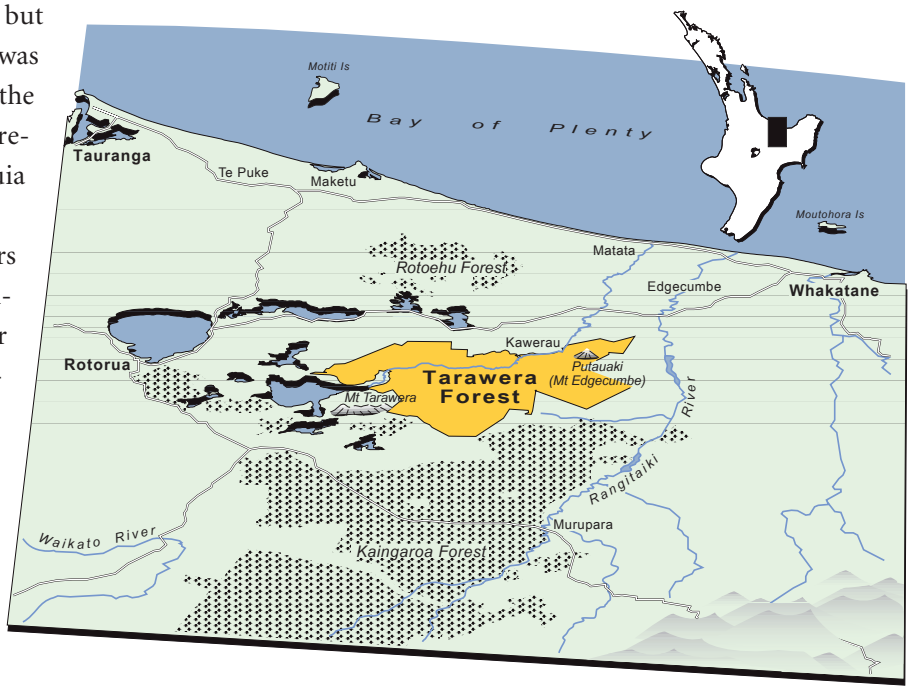

"The sense of grievance that surrounds the loss from Māori to private ownership of such a large area of land, including the taonga Putauaki, is exacerbated by the fact that the Tarawera Forest joint venture has proved to be a 'one-off' scheme. All other forestry projects utilising Māori land have involved leases, and some have enabled the Māori lessors to own the forest on their land at the end of the lease's term."

The Tribunal finds that the process employed by the Crown when developing and implementing the joint venture was inconsistent with Treaty principles in that it was inadequate to protect the non-economic interests of the Māori owners in their land. In particular, insufficient of the multiple Māori owners were involved, and they were not informed about possible forest leasing options and did not sufficiently understand the proposed venture's key terms. Also inconsistent with Treaty principles, the Tribunal finds, were the provisions of the Māori Affairs Act 1953 which the Māori Land Court relied on in 1966 to amalgamate the Māori land into one block (Tarawera 1) and further facilitate the joint venture's implementation. The Tribunal did not uphold the claims to financial prejudice resulting from the joint venture, finding that the claimants would have received significantly lower financial returns from a lease agreement. It considers, however, that the loss of ownership of 38,000 acres of Māori land and the sacred mountain Putauaki has not been adequately offset by the financial returns from the venture to MIL shareholders.

The Tribunal recommends that an apology and financial redress is required from the Crown "for the loss of rangatiratanga that has been caused by the transfer in the late 1960s of such a large area of Māori land to private ownership by means of a process in which the Crown's Treaty duties to Māori were not upheld". It describes the appropriate recipients of the remedy as all of those who were, in 1968 (when TFL became the owner of Tarawera 1 block) members of hapū associated with that land, and the descendants of those people. The Tribunal's recommendations extend to that wider group who can whakapapa to the area, as ownership of the land, and therefore MIL share allocation, had been affected by the raupatu actions of the Crown 100 years before the venture, and the intervening Māori land legislation.

The report provides a thorough and authoritative account of forestry development, Māori land and Crown policy in the 1960s, and the intersection of the three. It will be available from Legislation Direct in late-March 2003, and Chapter One and the recommendations will be available to download from the Tribunal's website then at: www.waitangi-tribunal.govt.nz/reports/nicentr/ The full report will be available on the website from late April 2003. ●

Te Atiawa Ki Te Tau Ihu (Wai 785)

Waikawa Hearings 27–31 January 2003

Environmental damage, access to fisheries, lack of consultation, and extensive land alienation were some of the issues presented in evidence by Te Atiawa during the hearings at Waikawa.

On the site visit around Queen Charlotte Sound, maps of the original reserves provisions were presented, with commentary on Crown alienations. Many pā sites and wāhi tapu were identified, with supporting information of demographics in the Sounds at the time of the signing of the Treaty of Waitangi. Twenty-six signatures were gathered in Queen Charlotte Sound, compared to 34 in Port Nicholson (Wellington), indicating the extent of inhabitation and the area's importance as a locus of communication.

Te Atiawa raised the issue of environmental damage to their traditional fishing grounds and wāhi tapu, and

Pā site in Queen Charlotte Sound

accelerated erosion, caused by the fast ferries' wash. They assert that the failure of the Marlborough District Council (MDC) and the Environment Court to address this issue is a breach of the Treaty.

Marginalisation of Te Atiawa interests in marine farming was presented as a real concern. In 1989, they opposed inshore mussel farms as they were to be sited on top of scallop beds and cut their access to mahinga kai (food gathering areas), and adjoining Māori land. Objections were overruled, and all inshore space has now been allocated. Claimant Mr Chris Love maintains that: "In declining any of our applications for marine farm licences, the MDC has effectively relegated Te Atiawa to being just another interest group operating under their system of First In First

Fast Ferry wash and Kaumatua George Martin viewing the resultant erosion of Moioio Island

Served. Te Atiawa believe that they should have been allocated marine farm space within their rohe as a right." MDC's failure to respect Te Atiawa kaitiakitanga (guardianship) of mahinga kai, or to properly consult and 'take into account the principles of the Treaty of Waitangi' under the Resource Management Act are alleged as breaches.

Supporting Te Atiawa claims, historian Dr Don Loveridge examined the impact of colonisation on the iwi. The Nelson grants of land to settlers began in 1845 but the NZ Company already could not fulfil its obligations (including Māori reserves promised as 10 per cent of the purchased acreage), and had sought arable land elsewhere. This resulted in an ill-advised survey attempt in the Wairau Valley in 1843 with fatal consequences.

Following the Crown purchase and allocation of the Wairau in 1847, the NZ Co identified Waitohi (Picton) as the best deep-water port outlet to service the settlers. As it was also the largest area of cultivated land in the Sounds, it was a major tribal asset and Te Atiawa refused to sell, offering the adjacent Waikawa bay instead. Exploiting the knowledge that the iwi sought European settlement and trade, the NZ Co threatened to abandon the area altogether if Te Atiawa did not give up Waitohi. This, coupled with the promise to construct a native township, induced the iwi to relocate to Waikawa in 1848. However, the NZ Co did not uphold their bargain to survey the Waikawa township, or undertake any other development. The Waikawa block provided the iwi with just 2500 acres – less than 30 acres each, with less than two arable acres each, and no provision for future needs. Futhermore, the Waitohi block ended up encompassing largely the whole Waitohi valley, a hugely larger area than referred to in the deed. Te Atiawa allege the Crown was negligent in allowing this to happen, and for failing to protect Māori interests.

Tribunal members and the claims committee at Waikawa marae

In the Te Waipounamu purchase of 1853, the Crown concluded the sale of Queen Charlotte Sound with Ngāti Toa, a conquering but non-resident iwi. Te Atiawa allege they were forced into the invidious position of agreeing to the deed of purchase in order to maintain their mana as resident iwi, and to retain the offer of the creation of reserves and a little cash. Dr Loveridge wrote: "The people had been manipulated in a masterly fashion by (Crown Agent) Donald McLean and manoeuvred into a position where honour and circumstance demanded a sale, even though the price being offered was ridiculously low." As the reserves were not properly surveyed, the Crown could not be certain that sufficient land had been retained for the present and future needs of the iwi.

Over time, the Native Land Court practice of partitioning the blocks into individual titles hastened the process of alienation. Individual blocks that were not economic units were later resumed by the Crown and re-amalgamated, then leased or sold. Other individual titles were successively bought up as owners could not pay the survey costs or rates. It is alleged that removing the restrictions to land alienation lessened future economic opportunities for Māori.

Waikawa itself was partitioned by the Native Land Court, with land being taken by the Crown for education purposes, water works, roads and scenic reserves. Te Atiawa allege that partitioning led to alienation of sections within the block, which would not have been possible if it had remained as one communal title.

Te Atiawa also contend that the Crown vested part of the Waikawa West block in the ownership of another iwi as compensation for taking land elsewhere. Te Atiawa specifically seek that this situation be rectified. ●

Assessment of the New Approach

The assessment of the new approach was independently commissioned by the Waitangi Tribunal to ascertain the effectiveness of its new process. The report concluded that if this government is serious in upholding its commitment to completing all historical claims as quickly as possible, it will support this initiative.

Furthermore, all Treaty sector agencies involved, including Crown officials, lawyers, researchers, Tribunal members and judiciary, as well as claimants, agreed that the new approach was a vast improvement in process. It was unanimously expressed that the efficiencies gained far outweighed any fiscal implications.

The report compared two similar sized inquiries in the Waitangi Tribunal, employing both old and new processes. Although the Mohaka ki Ahuriri inquiry is showing a slightly lesser budget input, it is still incomplete after nearly six years. In comparison the Gisborne inquiry, which began in 2000, is in the final phases of report writing, after only six months of hearing time.

The advantages of the new approach include a shortened inquiry process from the usual seven years to three to four years for each district, less fragmentation of claimant communities, and better overall focus resulting in a better outcome. This is achieved through grouping claims in an inquiry district, dealing with possible fragmentation issues of boundaries, overlaps of interest and mandate early in the process, and maintaining a strong dialogue throughout the intense programme. It is acknowledged the new approach leaves claimants in a more cohesive position to effectively enter early negotiations with the government to settle their claims. The reports produced under the new approach focus on issues of grievance and will be available as a toolkit to both claimants and Crown for the negotiations stage.

"The Waitangi Tribunal is pleased to have the support of the Treaty sector," says Tribunal Director Morrie Love. "Claimants, and the New Zealand public will be glad to see substantial progress being made through this transparent and effective process of truth and reconciliation."

A fuller explanation of the new approach is available on the Waitangi Tribunal's website at: www.waitangi-tribunal.govt.nz/inquiries/newapproach/ and in *Te Manutukutuku* 56, available on request from the Tribunal and also on-line at: www.waitangi-tribunal.govt.nz/news/temanutukutuku/

UREWERA CASEBOOK REVIEWED (WAI 894)

The Waitangi Tribunal's Chief Historian, Dr Grant Phillipson, spent several weeks reviewing the entire Urewera casebook. This involves over 10,000 pages of evidence in 42 core reports.

The casebook provides enough high quality research, with as little duplication as possible, for the Tribunal to hear the 33 Urewera claims. The clamaints have used it to specify their grievances in particularised statements of claim. At the judicial conference held at Taneatua in February, these statements of claim were reviewed. The conference also discussed potential research gaps identified from the casebook review. A research group has been formed to discuss the potential gaps and report back to the Tribunal about the need for any final research to be completed before hearings begin in November 2003.

The reports are being posted on the Tribunal's website extranet as PDF files. You can request a password to access these reports at: www.waitangi-tribunal/inquiries ●

Waitangi Tribunal

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