Parliament of the Commonwealth of Australia

THIRD REPORT OF THE PARLIAMENTARY JOINT COMMITTEE ON NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

Committee Exchange with New Zealand - August 1995

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All dealings with the Aborigines for their Lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all. They must not be permitted to enter into any Contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any Territory the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of Land by the Crown for the future Settlement of British Subjects must be confined to such Districts as the Natives can alienate without distress or serious inconvenience to themselves. To secure the observance of this rule will be one of the first duties of their official protector ...

Extract from Lord Normanby's Instructions to Lt Governor Hobson
14 August 1839

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PREFACE

From 7 to 10 August 1995 I was pleased to lead a delegation to New Zealand by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund.

The visit occurred at the invitation of the Speaker of the New Zealand House of Representatives, Hon Peter Tapsell, and took place under the Committee Exchange Program. This program involves a visit to Canberra each year by a committee of the New Zealand Parliament, and a return visit later the same year by a committee of the Commonwealth Parliament.

By convention, the Presiding Officers of the dispatching parliament determine the topic and the committee to participate in each exchange; the decision is usually taken in consultation. This is the Maori Language Year and Mr Tapsell indicated that indigenous land rights would be an appropriate topic. Accordingly, the Presiding Officers of the Commonwealth Parliament agreed that the Joint Committee should participate in the committee exchange. And, on behalf of the Committee, the Presiding Officers' acceptance of the New Zealand invitation emphasised the Committee's request to meet with representatives of Maori groups.

The Committee is grateful that, in a compact visit program over only three and a half days, there were several meetings with Maori; the visit began at Hamilton for that purpose. Our understanding of the settlement process in New Zealand was much enhanced through meeting with Tainui and, subsequently, with Ngai Tahu representatives. The visit itinerary is reproduced at Appendix 1.

It should be recorded that the visit was very successful as an exchange between the Australian and New Zealand Parliaments. The exchange was most cordial, informative and stimulating. It served to further enhance the sound relations between the two parliaments. In this regard I would like to thank Hon Peter Tapsell, Speaker of the House of Representatives, for introducing the Committee to the House and inviting it to the Chamber

for Question Time. I also wish to pay tribute to the hospitality of the Maori Affairs Committee and its Chairman, Hon Koro Wetere.

Finally, I should note my appreciation for the participation of the Joint Committee members in this visit. While individual members were able to pursue their particular interests, the delegation worked most harmoniously. This report outlines the matters discussed and indicates the benefits of the approach that was taken. We believe that it was mutually beneficial to the Australian and New Zealand parliaments.

Senator Chris Evans
Chair

GLOSSARY

hapu	:	sub-tribe
hui	:	a gathering or meeting
iwi	:	tribal grouping or people
kaumatua	:	elders
kingitanga	:	the Maori King Movement
kohanga reo	:	Maori language nests: pre-school total immersion education
mana	:	authority sometimes referred to as sovereignty
marae	:	a place of assembly
marae kawa	:	customs
raupatu	:	confiscation
runanga	:	a political structure or governing body usually comprising iwi and hapu
te reo Maori	:	the Maori language
tikanga Maori	:	to describe all aspects of Maori culture
tinorangatiratanga	:	the absolute authority of chiefs
wahi tapu	:	sacred sites or areas of high spiritual and cultural significance
whanau	:	sub-tribal group

CHAPTER 1

Introduction

1.1 Factual information that was provided to the Committee in New Zealand is presented in this report for the benefit of the Parliament and the wider community involved in native title matters. Prior to presenting that information, however, the delegation wishes to highlight certain impressions that it gained from the New Zealand visit, both of the situation in that country and the comparison with Australia.

1.2 The first notable point to record is the significant proportion of Maori in the New Zealand population. Those who identify as Maori make up thirteen per cent of the New Zealand population, a figure expected to increase to fifteen per cent over the next forty years.[1] In 2031 the Maori population is projected to number about 672,000, fifty-four per cent larger than 1991. This contrasts markedly, both in absolute figures and as a proportion of population, with the Australian indigenous community which is believed to be less than 300,000 or only 1.6 per cent of the population.[2]

1.3 The second issue to which the visit drew attention was the concept of native title itself. In New Zealand native title survived colonisation. Maori land, however, was significantly reduced over time through illegal confiscation and land sales, both voluntary and 'pressured'. Importantly, in New Zealand indigenous land rights have long been litigated on the basis of the 1840 Treaty of Waitangi. In Australia native title was recognised for the first time in 1992 by the High Court and has survived colonisation only where it was not extinguished by land grants; and litigation on the basis of the Native Title Act has proceeded only since 1994.

1.4 The courts have often found in favour of Maori claims about breaches of the Treaty; and successful petitions have been made to the Privy Council. New Zealand Maori are in a strong position to assert their land rights as a consequence of the protection afforded by the

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[1] *New Zealand Now Maori*, Statistics New Zealand 1994, p.1

[2] 1991 Census detailed in ATSIC Annual Report 1992-93, p.3

Treaty: the recent Tainui settlement had such a basis. By comparison, it was recognised by the Australian Parliament in debating the Native Title Act that indigenous Australians would have only limited scope for the recognition of native title. The Land Fund was accordingly devised to ensure a more satisfactory level of restitution.

1.5 Third, options for litigation under the Waitangi Treaty depend in part on the fact that the Treaty was negotiated with the British Crown. Under the Treaty of Waitangi Act action concerning breaches of the Treaty results in claims against the Crown. Private property is not subject to such claims and claims cannot be brought against a private individual or organisation. The principle adopted in New Zealand is that past wrongs cannot be corrected by further unjust acts.

1.6 This situation contrasts with that currently prevailing in Australia where, except in those cases where native title has been extinguished by inconsistent grant, native title may continue. Types of land holdings that are subject to valid claim remain to be determined by the courts. And the Commonwealth Government has taken the view that this matter will be settled by the courts rather than through legislation. The National Native Title Tribunal (NNTT) accepts applications on this understanding.

1.7 Fourth, under the Native Title Act, indigenous Australians seek to establish ongoing connection with their country, justifying determinations of native title. The NNTT attempts to mediate agreements between the parties. If agreement cannot be reached, the matter is referred to the Federal Court for determinination. In New Zealand, emphasis is placed on breaches of rights under the Treaty. The Waitangi Tribunal issues recommendatory reports; they can be utilised by the Office of Treaty Settlements which negotiates settlements for the Crown.

1.8 Fifth, it is notable that New Zealand Maori place very considerable significance on their insistence that the Crown apologises for breaches of the Treaty. The recent Tainui Deed of Settlement expressed the Crown's profound regret and apology and provided a recognition of the Waikato's principles: first, that as land was taken, land should be returned and, second, that money is the acknowledgment by the Crown of its crime.

1.9 Sixth, in Australia no limit has been placed on the amount of compensation that may be payable to indigenous people for the past extinguishment of native title. However a land

fund of about $1.4 billion will release $45 million per year through the Indigenous Land Corporation. In New Zealand a fixed amount of $NZ1 billion has been identified by the present government as the 'envelope' within which all Treaty claims should be settled.

1.10 The significance of these issues and the ways in which they have been brought into sharper focus for the Joint Committee will continue as an abiding benefit of the Committee Exchange with the Maori Affairs Committee of the New Zealand Parliament.

CHAPTER 2

Indigenous Land in New Zealand

The Treaty of Waitangi

2.1 The High Court's Mabo 2 decision confirmed that, upon British settlement of Australia, native title survived the acquisition of radical title by the Crown. Nevertheless, the acquisition of sovereignty exposed native title to extinguishment by valid exercise of sovereign power inconsistent with the right to enjoy native title. While it is clear that freehold title grants have extinguished native title, the extent to which pastoral leases have done so remains unclear at present.

2.2 In New Zealand, similarly, the customary land rights of the Maoris survived the Crown's acquisition of sovereignty.[3] The Treaty of Waitangi (1840) indicates that that was the Crown's intention; the second article provides:

> Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.[4]

2.3 Lt Governor Hobson had been sent to New Zealand in 1839 and instructed to issue a proclamation that the Crown would not 'acknowledge as valid any title to land which either

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3 McNeil K, *Common Law Aboriginal Title*, Oxford 1989, pp. 188-191

4 *The Treaty of Waitangi*, Department of Internal Affairs, 1990; the full text of the Treaty is at Appendix 2

has been, or shall hereafter be acquired, in that country which is not either derived from, or confirmed by, a grant to be made in Her Majesty's name, or on her behalf'.[5] Missionaries, speculators and other settlers had purported to purchase Maori land prior to the acquisition of British sovereignty. Purchases made before Hobson's proclamation were to be investigated by a Commission appointed by the Governor of New South Wales. And, following the Treaty of Waitangi, land sales by Maori were to be at their wish. At the time that the Treaty of Waitangi was signed in 1840 there were some 115,000 Maori in New Zealand and about 2,000 European settlers.

2.4 While the Treaty was intended to be a contract binding both parties, its significance diminished following the passing of New Zealand's administration to a Settler Government under the Constitution Act of 1852. Following the wars of the 1860s, recognition of the Treaty had declined to the point where, by 1877, Chief Justice Prendergast described it as 'a simple nullity'. Until 1975 New Zealand courts continued to hold that the Treaty had no legal status in domestic law.[6]

The Maori Land Court

2.5 The Native Land Act of 1865 established the Maori Land Court. The purpose of the Court was to facilitate European settlement by introducing a system of individual ownership over land formerly held by Maori on a community basis. Land belonging to a group of Maori would be vested in a small group of owners who were then able to dispose of it.

2.6 This process was very effective in alienating Maori land. By 1894 the rapid alienation of Maori land resulted in the Native Land Court Act; its effect was to make it virtually impossible for individuals to alienate Maori land. Of the 26.4 million hectares of land in New Zealand, only 1.3 million hectares currently remains in Maori ownership.

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5 McNeil,op. cit., p.226; the Crown's sovereignty derives from two proclamations made by Hobson on 21 May 1840

6 *The Treaty of Waitangi*, Department of Internal Affairs, 1990 (not paginated)

Potential Restitution

2.7 Maori, of course, continue to seek the return of their traditional lands. The Federation of Maori Authorities (Inc) has outlined the following three categories of land through which Maori can aspire to self-determination and autonomy:

> 1. Land confiscated, often through illegal military means - raupatu confiscation. Also lands obtained through less than free, open purchase, eg those obtained by the Crown for the cost of survey fees.
>
> 2. Land which remained to the benefit of Maori but on which management was controlled by the Crown and/or a Crown agent such as the Maori Trustee, and/or management was heavily constrained by long-standing legislation, perpetual Crown leases and the like.
>
> 3. Land which remained in Maori ownership, but on which management was heavily constrained to the extent that rangatiratanga was totally compromised by paternalistic requirements of Crown agencies such as the Maori Land Court.

All three classes of land are being regained by Maori.

2.8 The Federation of Maori Authorities (FoMA) met with the Committee in Wellington. FoMA was established by Maori to improve self-determination in management of land, particularly in regard to the categories 2 and 3 as listed. FoMA referred in the following way to each category already outlined:

> The first is being achieved through raupatu claims against the Crown through the Waitangi Tribunal, under the Treaty of Waitangi. Some claimant groups are also engaged in direct negotiations. These moves are achieving some progress but are taking many years. The first to be implemented is that of Tainui, which your Committee has visited.
>
> The second class of land has benefited to some extent from general economic policy moves in New Zealand to 'get Government out of all

business', and so some of these farms and other lands have been passed back to the control of their beneficial Maori owners. Another major area of land is that under iniquitous leases in perpetuity, generally to settler farmers, these leases being granted in Victorian times, and with terms and conditions very disadvantageous to the Maori owners. A very long-running campaign has been conducted over 30 years to have this Reserve Lands lease legislation revoked, with Crown compensation. Again there appears to be some progress towards a solution. FoMA is presently working with the lessees and Government to draft amending legislation in relation to these 'Reserve lands'.

The third class of land has been under control of the Maori beneficial owners in administrative forms such as Trusts and Incorporations. The operations of these Trusts and Incorporations has been controlled by legislation administered by the Maori Land Court. The need in this area has been to ensure that this legislation is modified and relaxed to recognise the tinorangatiratanga of the owners. FoMA had a major part in assisting Government to draft a new Maori Land Act, Te Ture Whenua Maori 1993.

2.9 FoMA believes that the recognition of Maori rights implicit in the Treaty of Waitangi provides the authority for Maori economic development. The federation describes its essential task as bringing together the vast economic power that is latent in Maori assets. As a first priority of future development, FoMA identifies economic self-determination.

2.10 The strategy that FoMA is following for increased self-determination was set out for the Committee as follows:

i) Working with Trusts and Incorporations which manage businesses on their own land by

- working to remove restrictions by active participation in re-writing the new Maori Land Bill into Te Ture Whenua Maori 1993;
- encouraging and participating in off-farm developments in processing, marketing, exporting, tourism and the like by groups of Maori Authorities;

- initiating a comprehensive Trustee Skills Program to enable Maori Trustees, and Directors to have skills at least as high as members of the general population who are Directors on similar-sized companies.

ii) Working with Trusts and Incorporations who are heavily restricted by the Victorian Reserve Lands perpetual leases, to have Government rescind these leases in such a way that the Incorporations will be managing a significant portion of their lands.

iii) Working with groups of owners of small parcels of land towards establishing Trusts or Incorporations as structures to manage development of that land.

2.11 The Joint Committee is impressed both by the commitment of Maori to self-determination and the initiatives identified by Maori to achieve it. There are, of course, some parallels with the Australian situation, and there could be considerable scope for Australian Indigenous people to benefit from the Maori experience.

CHAPTER 3

The Waitangi Tribunal

The Act

3.1 The Waitangi Tribunal was established pursuant to s.4 of the Treaty of Waitangi Act 1975. The Act enables the Tribunal to inquire into and make recommendations on any claim submitted. Until the 1985 Amendment Act, the Tribunal only considered claims concerning breaches of the Treaty from 1975 onwards. The Treaty of Waitangi Amendment Act 1985 allowed claims dating back to 6 February 1840; the subsequent 1988 Amendment Act increased the membership of the Tribunal to 17 members. And the 1993 Amendment Act prevents the Tribunal from making recommendations for the return of any private land to Maori ownership or the acquisition by the Crown of any private land.

3.2 A most useful guide to the Waitangi Tribunal has been published by the New Zealand Department of Justice. It describes[7] the features of the Treaty of Waitangi Act and amendments as follows:

- Claimants must be Maori or of Maori descent. Claims must be brought by an individual or individuals who may in turn claim on behalf of a group.
- The Waitangi Tribunal can only hear claims against the Crown.
- The claim must explain how those concerned have been or are likely to be prejudicially affected by any Crown action or petition past (since 6 February 1840), present or future...
- The Act says that the Tribunal is a Commission of Inquiry. This means it can:
    - order witnesses to come before it
    - order material or documents to be produced before it

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[7] *A Guide to the Waitangi Tribunal*, p.9

- actively search out material and facts to help it to decide on a claim (courts are much more limited in doing this).

- The Tribunal must send copies of its findings and recommendations (if any) to the claimant, the Minister of Maori Affairs, other Ministers of the Crown who the Tribunal sees as having an interest in the claim, and other persons as the Tribunal sees fit.
- The Tribunal has the right to refuse to inquire into a claim if it considers that claim too trivial, or if there is a more appropriate means by which the grievance can be resolved.
- The Tribunal may receive as evidence any statement, document, or information which the Tribunal believes may assist it in dealing effectively with the matter.
- The Tribunal can hold hearings on marae, and follows marae kawa (customs) when it does so.

A flow chart of the claims process is reproduced at Appendix 3.

Claims

3.3 Unlike the National Native Title Tribunal in Australia, the Waitangi Tribunal has an informal approach to the submission of claims. The Waitangi Tribunal will accept any letter or document appearing to raise concern about a Crown action or policy in relation to the Treaty.

3.4 There is, however, a checklist of points that need to be observed before the Tribunal can begin an official investigation. That checklist is as follows:

1. **Is it clear that the claimants are Maori?**
   [Claimants can either state this or refer, where relevant, to their important iwi or whanau relationships.]
2. **Have the individual or individuals bringing the claim been named?**

[Claims must identify at least one individual. Claims may be brought on behalf of any group of which the individual claimant/s are member/s, such as whanau, hapu, iwi, trust boards, trusts, incorporations or incorporated societies, runanga or other iwi authorities.]

3. **Does the claim refer to actions of the Crown?**
[A claim must be made against the Crown or in respect of some law, and not against a private individual or organisation. For example, if claimants are concerned with a sewage scheme then the claim must be against the laws or government policy which allows the scheme to go ahead, not against the local authority.

...

A claim can also be made if the government has not acted, that is, has failed to provide laws or policies to maintain the principles of the Treaty.]

4. **Do the claimants make it clear that they are, or are likely to be, prejudicially affected?**
[Claimants need to refer in general terms to the way or ways that the group of Maori people represented by the claimant(s) has suffered harm as a result of the Crown's actions.]

5. **Has the Treaty of Waitangi been mentioned?**
[...Claimants should ensure that the claim refers either generally or specifically to the Treaty and its principles.]

6. **The claim must be sent to**: The Registrar, Waitangi Tribunal, PO Box 5022, Wellington.

3.5 The guide to the Waitangi Tribunal also publishes important advice for claimants:

Research

Claimants can ask the Tribunal to commission a researcher to look into the claim before a hearing takes place if they think this is necessary. It is useful if claimants can say what research they think is needed. If necessary, the claim can be amended once the research is completed.

Legal help

If claimants need a lawyer's help, they can ask to have the lawyer's costs paid by the government through legal aid. Information about legal aid is available from the Tribunal or from the nearest District Court or Maori Land Court.

Place of hearings

Claimants can suggest the venue for a hearing - it is common, for instance, for the Tribunal to hear claims on marae.

Notice of the claim

The Tribunal will have to notify everyone who may be affected by the claim. If this is not done properly then the Tribunal's recommendations may be ruled ineffective. Claimants should include a list of all the organisations or persons they know of who could be affected by the claim, including government departments, local bodies, private organisations, or individuals.

Mediation

The Tribunal has the power to settle claims by mediation. A Tribunal member, the director of the Tribunal, or some other person, can be appointed as mediator. If claimants think that the whole or major parts of their claim can be settled by mediation then they can request that a mediator be appointed. If a claim referred to mediation cannot be settled in this way then it can still come back to the Tribunal for a full hearing.

Negotiation

Filing a claim with the Waitangi Tribunal does not prevent claimants from opening or continuing negotiations with the Crown over any matter in the claim. If claimants think their grievance may be settled by direct negotiation, this should be stated in the claim.

Types of Claims

3.6 There is a wide range of claims that have been submitted to the Waitangi Tribunal. The Tribunal's guide reports[8] the following types:

- pre-Treaty land transactions were not properly investigated and lands unjustly held were not returned
- pre-Native Land Court (NLC) acquisitions were unjust because:
  - the sellers had no rights or not all rights were respected
  - too much was taken
  - too little was paid
  - adequate reserves were not provided
  - areas that should have been reserved were not
  - the transactions were not fully understood
  - inadequate attention was given to hapu circumstances in assessing reserves
- pre-NLC gifts ought not to have been treated as absolute alienations
- certain allocations of Maori land for schools, hospitals or parks were unauthorised, or gave insufficient protection for the Maori interest; or that Maori had an interest in certain grants for those purposes but that interest was not recognised and provided for
- Maori land confiscations and the return of lands or the provision of compensation was inequitable
- the Native Land laws led to land loss and loss of tribal control, with severe results for Maori, especially:
  - individualisation without provision for the tribal interest
  - vesting in 10 or fewer owners without adequate recognition of a resulting trust
  - enabling partitions, and sales of individual interests without considering consequences for the group
  - meeting of owners procedures
- reserves were not provided for or kept as inalienable where need be

[8] *A Guide to the Waitangi Tribunal*, p. 21.

- Maori lands were wrongly leased on perpetual or other long-term leases
- Maori lands were wrongly acquired or taken for townships
- lands were wrongly acquired on account of unpaid rates or survey costs, or were wrongly taken for roads, reserves or public works purposes
- Maori did not receive a fair share of the farm development assistance, and land development policies were contrary to their interests
- government policies have given insufficient weight to Maori interests (thus, the claims concerning broadcasting, language, sewage discharges etc)
- the Maori interest in certain natural resources has not been properly recognised, especially:
  - fisheries, wildlife and plants
  - minerals discovered or undiscovered at 1840
  - lakes, rivers and harbours.

Powers

3.7 The powers of the Waitangi Tribunal are, for the most part, recommendatory. However, there are exceptions whereby certain statutory provisions enable the Waitangi Tribunal to make recommendations relating to land which are binding on the Crown.

3.8 Following an appropriate recommendation from the Waitangi Tribunal, land which the Crown has transferred to certain State enterprises and tertiary education institutions, and Crown forest land over which there is a forestry licence, is required to be purchased by the Crown for transfer to Maori to redress a valid treaty grievance.

3.9 There is additional statutory protection for land owned by a State enterprise which is deemed to be a wahi tapu (sacred site). This land may be resumed by the Crown, on application by Maori, through an Order in Council and returned to the tribe for whom that land is sacred. An application under this statutory process exists independently of any Treaty grievance and does not require any Waitangi Tribunal process.

3.10 The Waitangi Tribunal is prevented by statute from making recommendations on the return of land in private ownership or that the Crown acquire such land for return to Maori.

3.11 The Committee was pleased to visit the Waitangi Tribunal to discuss these matters with the Director of the Waitangi Tribunal Division on Wednesday 9 August. That evening, at dinner, the Committee explored further Tribunal issues with the Chairperson, Chief Judge Edward Taihakurei Durie.

CHAPTER 4

The Office of Treaty Settlements

Operation of the Office

4.1 In 1988 the Treaty of Waitangi Policy Unit was established within the New Zealand Department of Justice. This became the Office of Treaty Settlements (OTS) in January 1995, reporting directly to the Minister in Charge of Treaty of Waitangi Negotiations.

4.2 The OTS develops policies for the Crown about the settlement of Treaty of Waitangi claims, negotiates settlements and implements them. While the Waitangi Tribunal investigates and reports on Treaty claims, the OTS uses those reports for negotiating and settling claims. And it is not necessary for a Tribunal report to be issued. Claimants may ask for direct negotiations with the Crown: if the Crown agrees, OTS enters into negotiation. When claimants seek direct negotiations the Crown analyses the historical basis of their claim and seeks assurances on appropriate claimant representation.

4.3 The operations of Treaty negotiations are undergoing review following the establishment of the Office of Treaty Settlements, but the current intention of the Government is that following preliminary discussions the claim is entered onto the Negotiations Work Program. Acceptance of a claim onto this program is an important step. It means that the Crown acknowledges the nature and significance of the Treaty breach and that both the Crown and the claimants are willing to negotiate a resolution of the grievance. The Minister in Charge of Treaty of Waitangi Negotiations seeks a negotiating brief from Cabinet which, after setting out the facts of the claim and any important issues that may arise, provides authority for negotiations to begin. Once negotiations are successfully concluded a draft deed of settlement is drawn up. This is then ratified and signed by both the claimants and the Crown and becomes the Final Agreement.

A Settlement following Tribunal Report

4.4 The Ngati Rangiteaorere claim is an example of a claim which has been negotiated and settled after a report and recommendations by the Waitangi Tribunal. The OTS has provided the following account of that settlement.

4.5 Ngati Rangiteaorere is one of the eight iwi of the Arawa confederation of the Rotorua district. Their claim was lodged with the Waitangi Tribunal on 14 April 1987. Central to the claim was the loss of land at Te Ngae on the eastern side of Lake Rotorua. The claim also concerned the rating of Lake Rotokawau by the Crown and the taking of lands for roads without compensation being paid. Some other issues were removed from the claim by the Tribunal as they were to be addressed through other Tribunal reports and hearings.

4.6 The Tribunal found that the Crown was in breach of its Treaty obligations to Ngati Rangiteaorere when it granted freehold title of the land at Te Ngae to the Anglican Church. The Crown accepted this finding. Te Ngae Mission Farm was returned to Ngati Rangiteaorere by the Anglican Church as a result of private negotiations between the two parties. This land has been revested in Ngati Rangiteaorere through special legislation.

4.7 On the rating of Lake Rotokawau, the Tribunal found that the Crown's actions were a deliberate attempt to punish the owners for refusing to part with their lake and that these actions were a clear breach of the principles of the Treaty. The Tribunal recommended that the Crown refund the owners any rates paid plus interest and any outstanding arrears.

4.8 Negotiations between Ngati Rangiteaorere and officials from the Treaty of Waitangi Policy Unit (the predecessor of the Office of Treaty Settlements) followed. The officials advised the Government that an agreement could be reached.

4.9 A formal agreement was then signed between the Crown and Ngati Rangiteaorere on 21 October 1993. This was a full and final settlement of Ngati Rangiteaorere's grievances, including all those considered by the Waitangi Tribunal Claim Report. The agreement involved an undertaking by the Crown to provide rate-free status for Lake Rotakawau, plus payment of rates arrears and the sum of $760,000 to the claimants. An

Order in Council providing rate-free status for the lake was signed by the Governor-General in September 1994 and gazetted the following month.

4.10 The Waitangi Tribunal has noted the settlement and the claim has been removed from the Tribunal's register.

A Settlement without Tribunal Report

4.11 The Hauai claim is an example of a claim which has been negotiated and settled without an inquiry and report by the Waitangi Tribunal. The OTS has provided the following account of that settlement.

4.12 This claim was lodged with the Waitangi Tribunal on 28 February 1991 by George Hakaraia on behalf of himself and the Hauai Trustees. It arose from events in the 1970s when the Maori owners of the Hauai Peninsula in the Bay of Islands obtained planning consents to subdivide part of their land. However, the Crown opposed this as it did not want to see any further subdivision in the area.

4.13 The owners reluctantly accepted the Crown's offer of an exchange of land which, as it turned out, significantly disadvantaged them. The land they were offered was honeycombed with the remains of earlier coal mining operations. The owners' dissatisfaction led to the lodging of a claim with the Waitangi Tribunal. On 13 May 1991 the Tribunal referred the claim to mediation. The Crown then entered into discussions with the Trustees to try to resolve the grievances. Officials from the Treaty of Waitangi Policy Unit handled the negotiations for the Crown.

4.14 The outcome of the negotiations was an Agreement signed between the Hauai claimants and the Crown on 30 October 1993 which included the return of the claimants' original land at Hauai, the payment of $350,000 to the Trustees, and a contribution to the claimants' legal expenses.

4.15 The Crown also agreed to introduce special legislation to return the claimants to the situation in which they would have been had the original exchange of land not occurred. The provisions of the Reserves and Other Lands Disposal Bill (No 2) relating to the Hauai claim

fulfil this part of the Agreement. The Bill would vest the marginal strip areas of the land in the claimants for them to hold as a Maori reservation for the benefit of all New Zealanders. The small exception is a discrete piece of land which has been designated as wahi tapu by the claimants. However, free public access will continue for both the land designated as Maori reservation and as wahi tapu. The legislation is at the Select Committee stage.

CHAPTER 5

The Tainui Settlement

5.1 Following the Maori wars of the 1860s massive land confiscations (raupatu) took place in the Waikato. The 1863 New Zealand Settlements Act legalised the confiscation of 1.2 million acres between the Waikato and Waipa rivers.

5.2 Over time, 314,262 of the original 1,202,172 acres confiscated were returned to Maori control. Further, in 1946 an offer was made of £6,000 per year for fifty years and £5,000 thereafter in perpetuity. The offer was accepted by the Tainui people, the formal Waikato acceptance being signed on 22 April 1946.

5.3 Under the Waikato-Maniapoto Maori Claims Settlement Act 1946 the Tainui Trust Board was established to administer the annual payments, the first amount (£10,000) being received in February 1947. The Board's policy was that all Tainui should receive the benefits of compensation. It has since pursued the tribal, social and economic well-being of the Tainui people.

5.4 In 1987 the Crown attempted to transfer ownership and licences from State Coal to the new state-owned enterprise Coal Corp. The Tainui Maori Board challenged this proposal because it could have affected the possible return of traditional lands. In October 1989, the Court of Appeal found in favour of the Trust Board, prevented the transfer and admonished the Government. The Crown subsequently scheduled negotiations concerning the confiscated Waikato lands.

5.5 By 1992, agreement was reached for the return of the Hopuhopu Military Camp complex to the Tainui Maori Trust Board. By 1993 Te Rapa Air Force Base was vested in Potatau Te Wherowhero (a mid-19th Century Maori King) for the benefit of Waikato-Tainui. The question of costs was resolved and a partial settlement was reached on fisheries. The culmination of this negotiation process occurred on 22 May 1995 with the signing of a Deed of Settlement between Her Majesty the Queen in right of New Zealand and Waikato-Tainui; the deed was signed by Prime Minister Bolger and Te Arikinui Dame Te Atairangikaahu (the Maori Queen). The redress value of the settlement is $NZ170 million, with 29,803 acres of

Settlement Land and 8,614 acres of Improved Land being transferred together with some $NZ60 million.

5.6 One of the most important elements of this settlement is the Crown apology contained in clause 3. This matter was emphasised in the announcement by the Minister in Charge of Treaty of Waitangi Negotiations on 22 May and in the 7 August presentation to the Joint Committee by the Centre for Maori Studies and Research, University of Waikato. The form of apology, set out in the Deed of Settlement, states:

> 1. The Crown acknowledges that its representatives and advisers acted unjustly and in breach of the Treaty of Waitangi in its dealings with the Kiingitanga and Waikato in sending its forces across the Mangataawhiri in July 1863 and in unfairly labelling Waikato as rebels.
>
> 2. The Crown expresses its profound regret and apologises unreservedly for the loss of lives because of the hostilities arising from its invasion, and at the devastation of property and social life which resulted.
>
> 3. The Crown acknowledges that the subsequent confiscations of land and resources under the New Zealand Settlements Act 1863 of the New Zealand Parliament were wrongful, have caused Waikato to the present time to suffer feelings in relation to their lost lands akin to those of orphans, and have had a crippling impact on the welfare, economy and development of Waikato.
>
> 4. The Crown appreciates that this sense of grief, the justice of which under the Treaty of Waitangi has remained unrecognised, has given rise to Waikato's two principles 'i riro whenua atu, me hoki whenua mai' (as land was taken, land should be returned) and 'ko to moni hei utu mo te hara' (the money is the acknowledgment by the Crown of their crime). In order to provide redress the Crown has agreed to return as much land as is possible that the Crown has in its possession to Waikato.
>
> 5. The Crown recognises that the lands confiscated in the Waikato have made a significant contribution to the wealth and development of

New Zealand, whilst the Waikato tribe has been alienated from its lands and deprived of the benefit of its lands.

6. Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the grievance of raupatu finally settled as to the matters set out in the Deed of Settlement signed on 22 May 1995 to begin the process of healing and to enter a new age of co-operation with the Kiingitanga and Waikato.

5.7 The Joint Committee was pleased to be invited to a meeting of the Tainui Maori Trust Board on 7 August. It was a great privilege on this occasion to meet the Maori Queen and to subsequently join her and the Trust Board at lunch. This opportunity provided the Committee with an insight into the concerns, aspirations and plans of the Board as it continues with the task of managing the assets of its people. The Committee's inspection of the Hopuhopu Sports Complex and Te Rapa Air Force Base was also most informative in this regard.

CHAPTER 6

The Fishing Settlement

Maori Fisheries Act 1989

6.1 In 1986 the Muriwhenua Incorporation lodged a claim before the Waitangi Tribunal; amongst other things, it sought fishing rights. The Tribunal warned the Director-General of Agriculture and Fisheries against allocating individual transferable quota (ITQ), a private property right to fish resources. Despite the Tribunal's warning, on 1 October 1986, the Quota Management System (QMS), based on individual transferable quota, was introduced for fisheries management and conservation in New Zealand.

6.2 Concern developed that the QMS did not provide for the protection of Maori fishing rights as guaranteed in the second article of the Treaty of Waitangi and s.88(2) of the Fisheries Act 1983. The system took no account of Maori fishing rights even though Waitangi Tribunal decisions had recommended that the Crown recognise such rights under the Treaty of Waitangi.

6.3 Four Maori parties subsequently petitioned the High Court for a declaration that the QMS was contrary both to the Treaty and the law. In October 1987, the High Court granted an injunction in favour of the Ngai Tahu Trust Board, Muriwhenua, Tainui Maori Trust Board and the New Zealand Maori Council preventing the inclusion of certain species in the QMS.

6.4 Protracted negotiations between the Maori parties and the Crown finally resulted in the Maori Fisheries Bill, proposing 50 per cent of the inshore ITQ to Maori over a period of 20 years; the Bill was introduced to Parliament on 22 September 1988. The Maori parties, however, objected to parts of the Bill and to the Crown interpretation that Maori must 'substantially fish' the quota. Further negotiations produced an interim deal for 10 per cent of *all* quota to be given to Maori tribes over four years along with a payment of $10 million.

6.5 The Bill proceeded through Parliament despite Maori objections, and a rewritten version became law in 1989. The Maori parties had already returned to the High Court for a definition of the 'nature and extent' of the Maori fishing right, using two cases, Ngai Tahu and Muriwhenua. The main hearings were to start in early 1991 but were adjourned when

the Crown and Maori arranged to step back from the litigation and give the Act a chance to work.

Maori Fisheries Commission

6.6 The Maori Fisheries Commission was set up under the Maori Fisheries Act 1989 as the body through which the Crown could deliver quota to Maori, initially holding it on behalf of Maori, while at the same time developing an allocation scheme for its permanent handover to Maori. Seven Commissioners were appointed and a small permanent staff. The Crown began the gradual transfer of 10 per cent of quota species to the Commission, and the Commission started work on developing options for a permanent allocation system in conjunction with Maori groups.

6.7 In late 1992, after months of complex negotiations, a Deed of Settlement was signed in which the Crown agreed to fund Maori into a 50/50 joint venture with Brierley Investments Ltd to bid for Sealord Products Ltd, New Zealand's largest fishing company. In return, Maori accepted that, in respect of commercial sea fisheries, their Treaty rights had been honoured.

6.8 The $350 million purchase of a half share of Sealord gave Maori control of roughly one third of the New Zealand fishing industry. And, in addition to acquiring a half-share in Sealord, the Deed of Settlement promised Maori 20 per cent of quota for all species not yet in the quota management system.

Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

6.9 The Sealord purchase was enshrined in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The Act made other changes in recognition of the bigger, more complex workload now facing Commissioners. The Commission was renamed the Treaty of Waitangi Fisheries Commission or Te Ohu Kai Moana (TOKM), with wider-ranging powers, an increased membership of thirteen Commissioners and a requirement that it be clearly accountable to Maori as well as to the Crown.

6.10 The new Act opened the way for development of allocation procedures for Maori fisheries assets. And it made it clear that there were to be two separate processes - one for

distribution of assets already held by the Crown (the 10 per cent of quota plus cash and shares, referred to as 'pre-settlement assets') and a second for new assets acquired under the Sealord deal, referred to as 'post-settlement assets'. The assets include major shareholdings in three companies involved in the fishing and seafood industry - Moana Pacific Fisheries Ltd, Sealord Products Ltd, and Salmond Smith Biolab Ltd.

TOKM's Role

6.11 By law, TOKM is charged with helping Maori to get into, and develop 'the business and activity of fishing'. In practical terms, its responsibilities are as follows:

Allocation of assets

6.12 The main task for TOKM is the development of a method for allocation of assets to iwi, according to the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act, and the Deed of Settlement. TOKM is in the process of developing a scheme for allocation of pre-settlement assets, in conjunction with iwi. Once decisions are made on an optimum model, it will be presented to a national hui of iwi representatives, and will then go to the Minister of Fisheries for approval. Once the minister has approved the model, allocation can begin.

6.13 A scheme for distribution of post-settlement assets is also being developed and will be set out in the new Maori Fisheries Act, scheduled for introduction to Parliament following the development of a pre-settlement assets allocation model.

Leasing quota

6.14 Until an allocation scheme is in place, TOKM is responsible for organising annual lease rounds, to make quota available to iwi through a leasing process. It leases to iwi organisations at a rate calculated below true market rates; this underlines the objective of encouraging Maori to enter the business and activity of fishing. The discount lease scheme has been extremely effective in assisting Maori to get into, or further develop, fishing operations.

New Legislation

6.15 TOKM is responsible for ensuring the widest possible iwi representation in the legislative process, particularly in relation to amendments to the Fisheries Act, the new Maori Fisheries Act and the Customary Fisheries Legislation.

6.16 TOKM, in conjunction with the industry, made major submissions to the review of the Fisheries Act and succeeded in getting significant amendments to draft legislation, including the dropping of a proposal for access fees. It has a major role to play in the development of the new Maori Fisheries Act. This is the Act which will set out how post-settlement assets are to be distributed, on the basis of proposals developed by TOKM after full consultation with Maori. The new Maori Fisheries Act will also set out requirements for the appointment, composition and powers of any body succeeding TOKM. TOKM is also taking a lead in the development of regulations protecting customary fishing rights, as provided for in the Treaty of Waitangi (Fisheries Claims) Settlement Act.

6.17 It is now over two years since the passage of legislation and the debate among Maori over allocation continues. The Fisheries Commission is focusing on identifying bona fide iwi. Their work on iwi status will have a significant impact on future policy development.

6.18 The Commission recently ended a major consultative round over the way in which assets secured under the 1989 interim settlement should be allocated. The debate has become polarised around two major positions. The first is that fishing quota should be allocated on the basis of extrapolating from the traditional and customary rights exercised by tribes over their fishing grounds (mana moana). According to this position the amount of quota a tribe should receive would be determined by certain criteria (such as the length of their coastline); it is associated with those iwi who have extensive coastlines. The second position is that quota should be allocated according to the population of the iwi (mana tangata). Furthermore, urban Maori interests have taken legal action, claiming that they must be included in any allocation/distribution system. They have also taken a claim to the Waitangi Tribunal.

6.19 TOKM has canvassed the question of the distribution of fishing quota in its past two annual reports. For 1994-95 the Chairman, Sir Tipene O'Regan, noted that in the previous report:

> I went on to say that the Commission, despite quite intense debate within it, had managed to maintain a unified public position on the issues. I can no longer report that to you, indeed, any Maori person following the media would know that the Commission had become openly divided on the central questions of allocation and, indeed, of Maori development itself. The division has even moved into the notice of the Courts and Waitangi Tribunal and is frequently commented on by the press. It had been a particularly unfortunate development but the fact is that it has happened and the division within the Commission is now in the public arena and easy fodder for the anti-Maori element to graze on. This does not make for easy internal relationships and the management of that situation by our Commission staff is a testament to their professionalism and commitment.

Input into Fisheries Policy and Management Issues

6.20 TOKM has significant input into overall fisheries policy and management, largely through the Maori representatives who now sit on the Fishing Industry Board and its subcommittees. Provision for Maori representation on all statutory fishing bodies was included in the Treaty of Waitangi (Fisheries Claims) Settlement Act.

Training and Development

6.21 A $5 million training and development strategy is now in place aimed at ensuring Maori have the skills to match their fisheries assets. The strategy includes a scholarship program under which hundreds of Maori receive assistance to enrol in courses relevant to the fishing industry. Another innovation is an Iwi Management Course run jointly by Te Wananga O Raukawa and Waikato University aimed at ensuring that Maori have the necessary business management skills to reach the highest levels of fisheries operations.

Meeting with Commission

6.22 The Committee appreciated the opportunity to meet with Sir Tipene O'Regan at the Fisheries Commission to discuss these issues.

CHAPTER 7

Maori Language, Immersion Programs and Pre-Schools

Maori Language Act 1987

7.1 On 29 April 1986, the Waitangi Tribunal handed down its findings relating to the Maori language; they included several recommendations to Government covering the use of Maori in Courts of Law, government departments, local authorities, other public bodies, in education and in broadcasting.

7.2 Although calls had been made over a number of years for legislation to recognise the status of the Maori language in New Zealand, it was the Tribunal's finding that finally prompted the drafting of the Maori Language Bill, which was later enacted as the Maori Language Act 1987. The Act did not implement all of the Tribunal's numerous recommendations. Nevertheless, it does contain three important provisions:

- It declares Maori to be an offical language of New Zealand;
- It confers upon a wide range of participants the right to speak Maori in certain legal proceedings; and
- It established the Maori Language Commission (te Taura Whiri i te Reo Maori) and defines its functions and powers.

The Maori Language Commission

7.3 The mission adopted by the Maori Language Commission is to contribute to the growth and maintenance of the Maori language as a living, widely-used means of communication with a legal status equal to that of English. The Commission considers it ironic that Maori is in fact the only language in New Zealand that has received explicit official status in legislation. While English dominates the linguistic landscape of New Zealand it remains de facto the official language. In the Language Commission's view, awarding an official status to a language appears to do little more than confer upon it a symbolic value. Nevertheless, in a social climate already more disposed to recognise Maori values, it invites all New Zealanders to consider the rightful place of the language in contemporary society.

Exercising the Right

7.4 The only language right specifically legislated for concerns the Courts of Law. The Act states that in any legal proceedings, the following persons (ie., any member of the court, any party or witness, any counsel, etc.) may speak Maori, whether or not they are able to understand or communicate in English or any other language. When a Maori speaker chooses to exercise this right, the onus is on the presiding officer to ensure that a competent interpreter is on hand to translate. The law confers neither the right to be addressed in Maori nor to have one's testimony recorded in Maori.

He Taonga te Reo

7.5 1995 has been declared by the Maori Language Commission as New Zealand's national year of celebrating Maori language (He Taonga te Reo). It is designed to focus attention on the status of the language in New Zealand, and to encourage Maori and other interested groups and individuals to make an active commitment to learning, using and promoting the language.

7.6 Currently there are some 50 000 adult native speakers of Maori; they represent only about ten per cent of the Maori population. Nevertheless, there are now more speakers of Maori than at the turn of the century. While all Maori then could speak the language, they numbered only about 45 000.

7.7 In seeking to promote the Maori language, the Ministry of Maori Development has expressed the following objectives:

- encourage one another to learn Maori, and to use the language in daily activities;
- celebrate the place of the language in New Zealand's history, and in our modern society; and
- harness and actively employ the latent goodwill towards the Maori language within the wider New Zealand society.

7.8 In order to achieve these objectives the Ministry considers that the proper climate and realistic opportunities for using the language must be developed. It advocates that Maori speakers 'reclaim' certain speech domains; in particular, the home, the work-place, in

dealings with government departments, in sports clubs and in other social venues. The Ministry believes that these areas must be re-established as Maori language domains where the language can be freely used.

7.9 Accordingly, the Ministry has provided the following list of suggestions for tribes, groups and offices:

- further implement the Maori Language Public Sector Policy developed by the Maori Language Commission;
- create a Maori language scholarship relevant to your range of activities;
- arrange for the production of Maori language learning material relevant to your range of activities;
- arrange for pamphlets explaining your business in Maori;
- arrange for a Maori speaking receptionist to be available to Maori speaking clients;
- organise a display of Maori language material in your office;
- encourage government departments, banks and businesses in your local area to provide Maori language services;
- produce a Maori language edition of your newsletter;
- nominate a specific member of your tribal board or workplace to take responsibility for promoting Maori language activities;
- place advertisements in Maori;
- arrange for Maori signs in your office;
- encourage staff, group and tribal members to learn Maori; and
- sponsor a Maori language lecture series.

And the following suggestions have been made for individuals:

- if you are a speaker or learner of Maori, use the language as often as you can, in as many situations as possible. Every contribution will help to promote the use of the language;
- encourage all of your family and tribe to learn Maori;
- request the greater use of Maori on your iwi radio station and in your iwi newspaper;
- request Maori language services at government departments, banks and in shops;

- hold a series of language schools for members of your family;
- organise Maori language activities for children at Kohanga Reo and total immersion schools, outside of normal school hours;
- record kaumatua talking Maori, so that the recordings can be used to provide excellent language exemplars to language learners; and
- read Maori language books to your children.

7.10 While these suggestions have been made for initiatives to be taken by individuals and groups, there is already a very considerable level of organised promotion of the Maori language (beyond the Maori Language Commission). There are twenty-two state-funded Maori radio stations, with the specific aim of promoting the Maori language and culture. More than 22 000 students are studying Maori language as a subject in secondary schools. And there are up to 10 000 students in bi-lingual programs at 133 schools.

The Pre-School Program

7.11 One of the most impressive programs, however, is provided by the Kohanga Reo movement. The first kohanga reo pre-school began in 1982 at the Pukeatua Kokiri Centre, Wainuiomata. The primary focus is to stimulate the growth of family-based centres that offer the best Maori childcare including the exclusive use of the Maori language. It is aimed in large part at the promotion of the language and culture.

7.12 There are now some 832 kohanga reo throughout New Zealand. Approximately 15 000 infants are 'immersed' in Maori language and culture through this program. By 1994, 46 per cent of Maori children using early childhood services were enrolled in kohanga reo.

7.13 The level and extent of Government funding has gradually increased over the years and kohanga reo have progressively been brought into line with the mainstream early childhood services. In 1991 the funding administration of kohanga reo was transferred from the Department of Maori Affairs to the Ministry of Education. As a result of the increased demand on kohanga, the Te Kohanga Reo National Trust was established to deliver services and coordinate development. The Committee was privileged to meet with Sir John Bennett and staff of the Trust on Thursday 10 August.

7.14 Te Kohanga Reo National Trust has a contract with the Ministry of Education and administers state funding on behalf of individual kohanga reo. It is Government policy that kohanga reo be chartered with the Crown by July 1997. This means that, to continue to receive state funding, they will be required to meet accountability and quality conditions set by Government.

Maori in Schools

7.15 When beginning school, Maori children can continue a Maori-based education through the Kura Kaupapa Maori (KKM) 'total immersion' language schools. The first KKM was established as a private school at Hoani Waititi Marae in 1985. Since 1989 KKM have been established by the Minister of Education under s.155 of the Education Amendment Act 1989. There are now 38 state-funded KKM and Government has agreed to fund five more each year for the next five years. All KKM are primary schools, but two are composite (inclusive of secondary) and others have applied to extend to secondary school status.

7.16 Te Runanga o Nga Kura Kaupapa Maori is the umbrella body which promotes the aims and aspirations of KKM. Established in 1993, the main focus of the Runanga is to develop suitable administrative and policy-making structures for negotiating with Government agencies. The executive (Runanga Whaiti) is elected every year and is responsible for assisting the Ministry of Education in providing the KKM input into education policy and program implementation. A protocol between the Ministry of Education and the Runanga was agreed in April 1994. This has effectively formally linked the Runanga into the mainstream.

CHAPTER 8

Maori Health - Tainui Initiatives

The Tainui Health Plan

8.1 In 1983 the Tainui Maori Trust Board published the Tainui Report, which included the results of a survey of the needs of Tainui people. The survey found that Tainui people suffered from high rates of ill health, unemployment and low levels of formal education. As a result of these findings, the Trust Board called for a decade of concerted effort in economic and social development for the tribe.

8.2 Since 1983, the tribe has undertaken a number of community initiatives and has devised policy statements and plans for its overall tribal development, including in 1990 the production of the Tainui Health Plan. This plan received considerable interest from Area Health Boards and other government agencies. It promotes local and community-based programs with community health workers and other professionals working closely together. A range of health promotion, preventative and health education services are advocated.

8.3 The Waikato and Auckland Area Health Boards and other funding agencies provide varying degrees of support. Further, the Trust Board has secured funding packages for:

- GP clinics managed by Tainui; these clinics provide services at a more affordable cost to consumers and they develop joint venture/partnership relations with other groups. The Ministry of Maori Development has funded the pilot venture for this program.
- The Health Research Council has funded a project to develop a research database for assessing the health characteristics and needs of Tainui iwi.

8.4 The longer term strategy for Tainui health care is the establishment of an iwi-based health care plan enabling a comprehensive range of primary health care services to be provided.

The Health Care Resource Kit

8.5 In 1993 the Tainui Trust published a resource kit to encourage health promotion. The kit outlines the Tainui health objectives, principles for developing health initiatives, and the consequences of reforms in health services delivery.

Tainui Objectives

8.6 The Tainui objective is to improve the health status of its people through a Maori managed initiative. The resource kit has identified the cost of consultation and medicines as barriers to health care:

> The presence of Tainui in the primary health sector is intended to address these barriers, thereby putting medical help and medication within the reach of Maori.

Core Values

8.7 The Tainui resource kit articulates a set of core values which are regarded as central to the development and operation of their health initiatives. They are:

- We are committed to encouraging active participation by local people.
- We will take an active lead in providing for future health initiatives.
- Our people will be given the best opportunity to use our services.
- Without compelling people to use our services, we offer another alternative based on quality of service.
- We will provide services which are affordable to our people.
- We will be efficient, accountable for the use of our resources and will demonstrate value for money.
- The customer is always right. We will therefore respect people and treat them with dignity.

- Our services will be delivered by Maori for Maori.

8.8 Essentially, then, in their concern for the delivery of health services to Maori, the Tainui are convinced that services need to be Maori initiated, designed and controlled. Importantly, for Tainui the health services program should be holistic and stress the Maori dimensions of life. It is also important for program delivery to be culturally relevant. And Tainui believe that their wellbeing will not necessarily improve without progress being made in education, employment, training and housing. For Tainui, the settlement of outstanding raupatu claims is also an essential component.

Committee Visit

8.9 The Committee was grateful for the opportunity to visit the Ngaa Miro Health Centre at Tuurangawaewae Marae to observe the Tainui program being implemented. In order to provide comprehensive background information concerning this program, the major section from the resource kit is available from the Committee Secretary. The Ministry of Maori Development considers that the Tainui project provides a model for other communities. The Ministry describes the kit as a valuable resource for other iwi interested in establishing similar health centres.

CHAPTER 9

Meeting with New Zealand Committee

9.1 Historically, the New Zealand Parliament has provided statutory opportunities for Maori participation and identification. Four electorates have been reserved for Maori representation; currently there are more than four Maori members of the House of Representatives. While the guarantee of Maori representation in the Parliament ensures some Maori identification with the legislature, the likelihood is of increased Maori representation in the New Zealand Parliament given the anticipated increase of Maori in the population[9] and the recent adoption of the Mixed-Member Proportional (MMP) electoral system. Under this system, the boundaries of which were gazetted on 27 April 1995, only 5 per cent of the vote is required for a party to gain parliamentary representation.

9.2 Further, Maori interests have been consolidated in the New Zealand Parliament through the committee system of the House of Representatives. The Native Affairs Committee was among the first to be established; it was set up in 1854 to consider problems associated with vaccination and became a permanent committee in 1871. For some fifty years from the last quarter of the nineteenth century, a substantial amount of the committee's work was concerned with several hundred petitions about Maori land claims. Since 1944 the Committee has been known as the Maori Affairs Committee. At present it is the largest of the subject committees of the House, consisting of nine members.

9.3 The Maori Affairs Committee has met in a specially dedicated committee room since 1922. Having met on the tenth floor of the temporary Parliament buildings in a room known as Te Ao Marama, it now meets in its own room in the restored Parliament House.

9.4 The Parliamentary Joint Committee on Native Title and the Maori Affairs Committee met on Wednesday 9 August 1995 for more than three hours in the Committee Exchange. This private meeting was preceded by Karanja and a Haka Powhiri performed by the Manawhenua Cultural Group. The Committee Exchange involved a wide-ranging discussion including the following:

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[9] *New Zealand Now Maori*, Statistics New Zealand, 1994, p.1

- The development and passing of the Te Ture Whenua Maori Act (Maori Land Act) 1993

- Consultation processes for indigenous peoples

- Establishment of Tribunals

- Settlement of grievances over generations

- Relationships between Maori and the Crown

- Treaty issues for Maori

- Role and function of ATSIC in Australia

- Operation of the National Native Title Tribunal

9.5 The Committee Exchange was characterised by a substantial discussion of these matters to the mutual benefit of the committees. It confirmed the significance and value of the visit. In New Zealand Committee members expressed appreciation for the exchange of experiences and the hope that similar hospitality would be able to be extended to the Maori Affairs Committee.

Senator Chris Evans
Chair

Appendix 1

Visit Itinerary

Visit to New Zealand

of

Joint Committee on Native Title

Parliament of Australia

Senator Chris Evans
Senator for Western Australia
Australian Labor Party

Senator Christabel Chamarette
Senator for Western Australia
The Greens (WA)

Senator Chris Ellison
Senator for Western Australia
Liberal Party of Australia

Mr Harry Quick MP
Member for Franklin (Tas)
Australian Labor Party

Mr Peter Grundy
Committee Secretary

Sunday 6 August **Sydney - Auckland**

Afternoon

3.20 Mr Harry Quick MP and Mr Peter Grundy, Joint Committee on Native Title, Parliament of Australia arrive at Auckland International Airport on Qantas Airways QF43 from Sydney.

Met by: Ms Marg Bryant
Dept of Internal Affairs

Mr Lawrence Tukaki-Millanta
Maori Affairs Committee

3.45 Arrive Auckland Airport Travelodge.

11.15 Senator Chris Evans and Senator Christabel Chamarette arrive at Auckland International Airport on Qantas Airways QF 49 from Sydney.

Met by: Ms Marg Bryant
Dept of Internal Affairs

Mr Lawrence Tukaki-Millanta
Maori Affairs Committee

11.30 Arrive Auckland Airport Travelodge.

Evening Free from official engagements.

Monday 7 August **Hamilton - Ngaruawahia**

Morning

7.30 Leave by coach.

9.00 Arrive Conference Centre, Hopuhopu Sports Complex, Old Taupiri Road.

Mihi (Welcome address).

Briefing and discussions on the Tainui confiscation claim, covering history of Raupatu claim, Settlement and Education Initiatives.

9.40 Joined by: Dr Barbara Harrison
Senior Research Fellow
Centre for Maori Studies and Research

Briefing on role of the Centre for Maori Studies and Research of the University of Waikato.

10.00 Site inspections of Tainui settlement assets.

Hopuhopu Sports Complex

Joined by: Mrs Raiha Mahuta
General Manager

Mrs Raupo Kirkwood
Conference Manager

10.30 Morning Tea

11.00 Hopuhopu Farm

Met by: Mr Dixon Wright
Farm Consultant

11.20 Leave by coach.

11.30 Arrive 29A River Road, Ngaruawahia
Raukura Hauora O Tainui (Tainui Health Resource Centre).

Met by: Mrs Ramari Maipi

Afternoon

12.00 Te Reo Irirangi o Tainui (Tainui 95.4 FM Radio Station).

Met by: Ms Mamae Takerei
Liaison Officer

12.30 Leave by coach.

12.40 Arrive 915 Te Rapa Road, Ngaruawahia.

Raukura Moana Fisheries Ltd

Met by: Mr Tony Magner
General Manager

1.00 Proceed to Offices of the Tainui Maori Trust Board.

Met by: Mr John Te Maru
Secretary

Luncheon with members of the Tainui Maori Trust Board.

2.00 The Joint Committee on Native Title, Parliament of Australia, join the meeting of the Tainui Maori Trust Board, including briefing and discussion regarding key aspects of the Tainui settlement and development strategy.

Key topic of Tainui Maori Trust Board Meeting: Formation of a Commercial Board (Auckland advisors in attendance).

3.30 Proceed to inspection of the Te Rapa Site, one of the original areas of land confiscation and a key settlement claim.

Joined by: Mr John Edmonds
General Manager

4.15 Leave by coach.

4.30 Arrive Le Grand Hotel, Corner Victoria and Collingwood Streets, Hamilton.

5.00 Leave by coach.

5.15 Arrive Wings Event Centre, State Highway One, Te Rapa.

Met by: Mr Barry Wilcox
Business Manager-Hamilton
Bank of New Zealand

The Joint Committee on Native Title, Parliament of Australia, are Guests of Honour at a cocktail function hosted by the Bank of New Zealand, including a presentation and informal discussions.

7.30 Return to Le Grand Hotel.

Evening Free from official engagements.

Tuesday 8 August **Wellington**

Morning

8.00	Leave by coach.
8.15	Arrive Hamilton Airport.
8.40	Depart Hamilton Airport on Air New Zealand NZ8563.
9.50	Arrive Wellington International Airport, Air New Zealand Domestic Terminal.
10.10	Leave by coach.
10.30	Arrive at Australian High Commission, 72-78 Hobson Street, Thorndon.
	Met by: HE Mr Ray Greet High Commissioner to New Zealand
10.45	Briefing by Australian High Commission.
11.55	Leave by coach.

Afternoon

12.00	Arrive Wellington Parkroyal Hotel.
1.15	Leave by coach.

1.25	Arrive Te Whare Tohu Tuhituhinga o Aotearoa (National Archives), 10 Mulgrave Street, Thorndon. Proceed to The Constitution Room.	
1.30	Introduction to and viewing of original documents of Te Tiriti o Waitangi (Treaty of Waitangi).	
2.05	Leave by coach.	
2.15	Arrive Te Puni Kokiri (Ministry of Maori Development), 126-132 Lambton Quay (Joined by Senator Ellison).	
	Powhiri (Maori Welcome).	
	Briefing and discussions regarding the development of Maori and Treaty of Waitangi policy.	
4.00	Proceed to Executive Wing, Parliament Buildings.	
4.15	Call on Hon John Luxton, Minister of Maori Affairs.	
4.45	Call on Hon Douglas Graham, Minister in Charge of Treaty of Waitangi Negotiations.	
5.15	Proceed to Te Ao Marama Room.	
5.25	Met by:	Mr Api Mahuika Te Runanga o Ngati Porou
		Mr Tairongo Amoamo Te Whakatohea
		Mr Peter Adds Te Ati-awa

Mr Tutekawa Wyllie
Ngai Tamanuhiri

Mr Tamati Cairns
Ngai Tuhoe

5.30 Iwi open forum.

8.00 Arrive Wellington Parkroyal.

Evening Free from official engagements.

Wednesday 9 August **Wellington**

Morning

8.00 Leave by coach.

8.10 Arrive Bowen House and proceed to Level 10.
Briefing and discussions with Mr John Grant, Chief Registrar, Maori Land Court.

9.10 Powhiri (Maori welcome).

Met by: Hon Koro Wetere
Chairperson
Maori Affairs Committee

The Joint Committee on Native Title,
Parliament of Australia meets with the Maori Affairs Committee in Te Ao Marama.

Afternoon

12.15 Proceed to Ministerial Dining Room.

The Joint Committee is Guest of Honour at a luncheon hosted by Hon Peter Tapsell, Speaker of the House of Representatives.

2.00 Proceed to Bowen House.

The Joint Committee on Native Title, Parliament of Australia is introduced to the House of Representatives.

2.50 Proceed to 10th Floor, Te Ao Marama.

Met by: New Zealand Maori Council
National Maori Congress
Maori Women's Welfare League
Federation of Maori Authorities.

Briefing and discussion regarding the roles of those groups represented in Treaty of Waitangi issues, development of Aotearoa New Zealand, the support of Maori women and their families, and management of Maori resources.

4.00 Proceed to Waitangi Tribunal, Seabridge House.

Met by: Mr Buddy Mikare
Director

Briefing and discussions regarding the role of the Waitangi Tribunal and the Maori Land Court.

5.30 Proceed to Wellington Parkroyal.

7.00 Leave by coach.

7.20 Arrive at the residence of the Australian High Commissioner, 15 Butavas Street, Khandallah.

Met by: HE Mr Ray Greet
High Commissioner to New Zealand

7.30 The Joint Committee on Native Title are Guests of Honour at a dinner hosted by HE Mr Ray Greet, High Commissioner, Australian High Commission.

10.30 Return to Wellington Parkroyal.

Thursday 10 August **Wellington - Sydney**

Morning

7.45 Leave by coach.

8.00 Arrive Te Kohanga Reo (Language Nest) National Trust, 67 Hankey Street, Mount Cook.

Briefing and discussions with Sir John Bennett regarding the achievements of Te Kohanga Reo.

9.10 Leave by coach.

9.25 Arrive Te Ohu Kai Moana (Treaty of Waitangi Fisheries Commission), 48 Mulgrave Street, Thorndon.

9.30 Briefing and discussions with Sir Tipene O'Regan regarding the administration of the Treaty of Waitangi Fisheries claim settlement.

Briefing concerning Ngaitahu Trust Board and current negotiations for Treaty of Waitangi Fisheries claim settlement.

11.20 Leave by coach.

11.30 Arrive Investment Centre, corner of Featherston and Ballance Streets.

Met by: Mr Steven Chrisp
Taura Whuri i te Reo Maori
(Maori Language Commission)
Ms Ripeka Evans
Te Mangai Paho
(Maori Broadcasting Commission)

Combined briefing and discussions regarding the role of the Maori Language Commission in Te Tau o te Reo Maori (Maori Language Year celebrations), the Maori Language Act 1987 and the role of the Maori Broadcasting Commission in promoting the survival of te reo (language) in broadcasting.

Afternoon

12.40 Arrive Wellington Parkroyal.
Free from official engagements.

1.45 Leave by coach.

2.30 Arrive Wellington International Airport.

3.45 Members of the Joint Committee on Native Title, Parliament of Australia depart Wellington International Airport on Qantas Airways QF 48 to Sydney.

Farwelled by: Hon Koro Wetere
Chairman
Maori Affairs Committee

Appendix 2

The Treaty of Waitangi

Preamble to the
Treaty of Waitangi,
Official English Version

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favor the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands. Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the Native population and to Her subjects has been graciously pleased to empower and authorize me WILLIAM HOBSON a Captain in Her Majesty's Royal Navy Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the Confederated and Independent Chiefs of New Zealand to concur in the following Articles and Conditions.

English Version of the Treaty's Three Articles

Article the First
The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Article the Second
Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third
In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof; in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this sixth day of February in the year of Our Lord One thousand eight hundred and forty.

The Treaty - The Meaning of the Words
(Reproduced from *A Guide to the Waitangi Tribunal,* pp.5-6)

The Treaty is in two texts, one English, one Maori, and one is not an exact translation of the other. Despite the problems caused by the different versions, both texts conclude that the Treaty is a compact whereby the Maori gave the Crown rights to govern and develop a British settlement, while the Crown guaranteed Maori full protection of their interests, their status and full citizenship rights.

THE PREAMBLE

In the preamble to the Treaty articles, the following objectives are stated. The Treaty is intended to:

- protect Maori interests from the encroaching settlement
- provide for British settlement
- establish a government to maintain peace and order.

However, the Maori text has a slightly different emphasis. It suggests that the Queen's main promise to Maori was to secure tribal rangatiratanga and Maori land ownership.

THE FIRST ARTICLE

In the English text, the Maori ceded 'sovereignty', whereas in the Maori text they gave the British a right of 'governance'.

The problem for the original translators of the English draft of the Treaty was that 'sovereignty' is a complex term for which there is no direct Maori translation. Instead, the translators used 'kawanatanga', a transliteration of the word 'governance', which was in current use.

As a result, in this article, Maori ceded to the Queen a right of governance in return for the promise of protection, while retaining the authority they always had to manage their own affairs.

THE SECOND ARTICLE

In the English text, the Queen guaranteed to Maori the undisturbed possession of their properties, including their lands, forests and fisheries for as long as they wished to keep them. In the Maori text, the Queen promised to uphold the authority the tribes have always had over their lands and taonga.

The English text stresses rights of property and ownership, while the Maori text emphasises status and authority. The use of the word 'rangatiratanga' should be interpreted as the right of tribal self-management rather than national sovereignty. In 1840, Maori had no conception of national sovereignty.

The second article provides for land sales to be effected through the Crown. The Waitangi Tribunal, after reading the instructions for the Treaty provided by the Colonial Secretary, Lord Normanby (1839), concluded that the purpose of this provision was not just to regulate settlement but to ensure each tribe retained sufficient land for its own purpose and needs.

THE THIRD ARTICLE

In the third article, the Crown promised to Maori the benefits of a royal protection and full citizenship. The emphasis given to the active promise to protect is important.

THE EPILOGUE

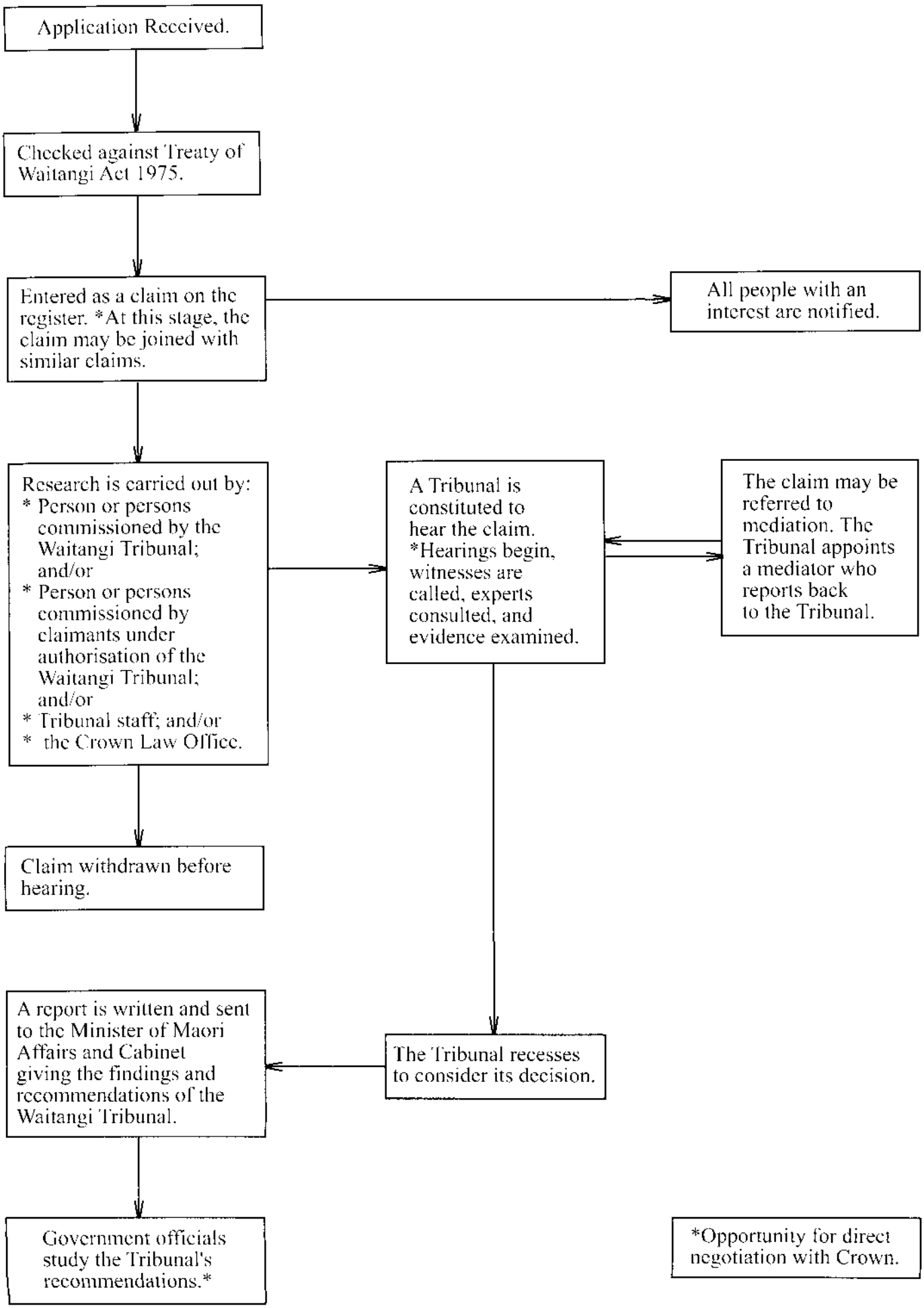
Here the signatories acknowledge that they have entered into the Treaty having regard to it in full spirit. These words are important, for it is the principles of the Treaty rather than its strict terms which must define the meaning of the Treaty today.

Regard must be given to cultural meanings of words, the surrounding circumstances, things said at the time, and the parties' objectives, as far as can be gathered from other sources. If we do this, then there are few problems caused by the variations between the texts. The function of the Waitangi Tribunal is to investigate whether the actions complained of are inconsistent with the *principles* of the Treaty.

Appendix 3

Waitangi Tribunal: Flow Chart of the Claims Process

Flow Chart of the Claims Process



Native Title: Committee Exchange with New Zealand - August 1995