

CHAPTER 1

INTRODUCTION

The iwi, hapu, and whanau of Te Tau Ihu o te Waka a Maui (the northern South Island) have filed some 31 claims with the Waitangi Tribunal alleging that the Crown has breached the Treaty of Waitangi by its actions (or its failure to act) in their rohe, with consequent prejudicial effects. We heard those claims from 2000 to 2004, with interruptions for litigation over our jurisdiction. Settlement negotiations began after our final hearing and, in order to assist those negotiations, we issued two preliminary reports in 2007 on the Crown's actions with regard to the claimants' customary rights.¹ In June 2008, we issued an incomplete pre-publication version of this, our final report, in order to help with negotiations. It dealt with the principal historical claims raised in our inquiry, covering all issues except for those related to natural resources and the environment, but had not been fully edited. This new and final edition of our report replaces the pre-publication version, which should no longer be relied on by parties.

From 1839 to 1842, the New Zealand Company negotiated with certain Maori right holders for the establishment of the Nelson settlement in Tasman and Golden Bays. The Crown's investigation of the company's title and its eventual award of land to the company were major issues for our inquiry. Similarly, the company's scheme of native reserves, the Nelson tenths, generated significant grievances, which were raised in the claims before us. Perhaps most important of all was the Crown's purchase of almost the entire lands of the claimants between 1847 and 1856, which left many in a state of virtual landlessness and enduring poverty, unable to take advantage of the benefits promised by settlement. We also investigated claims about the few pieces of land that survived these vast purchases. There was a further question as to whether customary rights to natural resources had been alienated as part of these 1850s transactions. We addressed that question, and associated claims about customary fisheries, mahinga kai, and other resources. This chapter sets out the process followed in our inquiry and describes the claims that were made to us and the Treaty principles on which we have relied.

1. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Preliminary Report on Customary Rights in the Northern South Island* (Wellington: Legislation Direct, 2007); Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Preliminary Report on Te Tau Ihu Customary Rights in the Statutory Ngai Tahu Takiwa* (Wellington: Legislation Direct, 2007)

1.1 THE TE TAU IHU INQUIRY

The tangata whenua call the northern South Island by the name of Te Tau Ihu o te Waka a Maui. This name commemorates the fishing up of the North Island by Maui from his canoe (the South Island) and refers to the prow (te tau ihu) of the canoe (o te waka) of Maui (a Maui).² In this report, we have used the name ‘Te Tau Ihu’ for our northern South Island inquiry district, which constitutes the region north of the statutorily defined Ngai Tahu takiwa (see fig 1). Maori iwi, hapu, whanau, and individuals of that district have filed 31 claims, which overlap with each other in terms of geography, common actions of the Crown and their effects, and iwi rohe. These claims were grouped together for concurrent inquiry by the Tribunal.

Under the Treaty of Waitangi Act 1975 and its amendments, we have the task of conducting an inquisitorial process to ascertain whether certain acts or omissions of the Crown have breached the principles of the Treaty of Waitangi. If we find that Treaty breaches have taken place, we must then determine whether the claimants have suffered prejudice. If we find the claims to be well founded and the claimants to have been prejudiced, we may then make recommendations for the removal of the prejudice and the prevention of its recurrence. This process is dedicated to healing the nation’s past and restoring the Treaty relationship between the Crown and Maori.

The Crown acknowledged in our inquiry that it had breached the Treaty in respect of some of the claims made by the Te Tau Ihu tribes, and that appropriate redress should be negotiated in those cases. In particular, the Crown conceded that it had failed to inquire properly into customary rights before buying land or confirming the New Zealand Company’s title. It also admitted that its governors and officials had acted with a ruthless pragmatism that sidelined the Treaty and deliberately advantaged settlers over Maori. As a result, the Crown’s purchases left Te Tau Ihu Maori in poverty, with insufficient land for them to farm or to use their customary resources, thus foreclosing their options either to develop in the new economy or to maintain their customary way of life. These admissions were helpful in our deliberations.

1.2 TREATY PRINCIPLES

The Waitangi Tribunal evaluates claims in light of both the plain meaning of the terms of the Treaty and the overarching principles which arise from the Treaty relationship forged between the Crown and Maori in 1840. The articles and principles of the Treaty have been

2. Hilary Mitchell and Maui John Mitchell, ‘A History of Maori of Nelson and Marlborough’, 2 vols, report commissioned by Te Runanganui o te Tau Ihu o te Waka a Maui, 1992 (doc A9), vol 1, pp 1-4-1-6

explained in detail in previous reports of this Tribunal and, without duplicating their detailed explanations here, we rely on those reports.

For our Te Tau Ihu inquiry, we note that many of the key actions of the Crown that are now the subject of claims took place very close in time to the signing of the Treaty. The contemporary instructions of Lord Normanby and other British secretaries of state, the public statements and promises of governors and Crown officials, and the public statements of New Zealand Company directors and officials are all relevant to how we have interpreted the principles of the Treaty. We assess these early, publicly promulgated standards of official behaviour, and how they relate to our understanding of the Treaty, in later chapters.

It would, however, be a mistake to assume that those early statements and promises were forgotten in later times. In chapter 11, we note that commissions of inquiry reminded Parliament in the 1880s and 1890s of the undertakings of Normanby, Earl Grey, and Governor Grey. The historical memory and significance of these things persisted into the twentieth century. As the central North Island Tribunal notes, Sir James Carroll made the following statement to Parliament in 1913:

All Governments saw the wisdom – though the present Government fail to see any – of reserving Native Lands for their present and future maintenance. It was a cardinal policy, and, furthermore, it was an obligation cast upon all Governments, on an understanding with the Imperial authorities when the Constitution was granted to this country, that the Maori should be protected against the utter deprivation of his lands. The Imperial authorities had the administration of Native affairs before we got our Constitution, and would not hand them over until it was thoroughly recognized that every care would be taken of the Natives, and their affairs and their interests, by the Government of the country.³

In this introductory section, we give a brief description of the Treaty principles that will be further explained and relied upon in our report.

1.2.1 Partnership

In the words of the president of the Court of Appeal, ‘the Treaty signified a partnership between the races’ and each partner had to act towards the other ‘with the utmost good faith which is the characteristic obligation of partnership’.⁴ The obligations of partnership included the duty to consult Maori and to obtain the full, free, and informed consent of the correct right holders in any transaction for their land.

3. Sir James Carroll, 28 November 1913, NZPD, 1913, vol 167, p 428 (Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 430)

4. *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641, 665 (CA)

1.2.2

1.2.2 Reciprocity

Above all, the partnership is a reciprocal one, involving fundamental exchanges for mutual advantage and benefits. Maori ceded to the Crown the kawanatanga (governance) of the country in return for a guarantee that their tino rangatiratanga (full authority) over their land, people, and taonga would be protected. Maori also ceded the right of pre-emption over their lands on the basis that this would be exercised in a protective manner and in their own interests, so that the settlement of the country could proceed in a fair and mutually advantageous manner.⁵

1.2.3 Autonomy

As part of the mutual recognition of kawanatanga and tino rangatiratanga, the Crown guaranteed to protect Maori autonomy, which the Turanga Tribunal defined as ‘the ability of tribal communities to govern themselves as they had for centuries, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those determinants.’⁶ Inherent in Maori autonomy and tino rangatiratanga is the right to retain their own customary law and institutions and the right to determine their own decision makers and land entitlements.

1.2.4 Active protection

The Crown’s duty to protect Maori rights and interests arises from the plain meaning of the Treaty, the promises that were made at the time (and since) to secure the Treaty’s acceptance, and the principles of partnership and reciprocity. The duty is, in the view of the Court of Appeal, ‘not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable’, and the Crown’s responsibilities are ‘analogous to fiduciary duties.’⁷ Active protection requires honourable conduct by, and fair processes from, the Crown, and full consultation with – and, where appropriate, decision-making by – those whose interests are to be protected.

1.2.5 Options

The Treaty envisaged a place in New Zealand for two peoples with their own laws and customs, in which the interface was governed by partnership and mutual respect. Inherent in the Treaty relationship was that Maori, whose laws and autonomy were guaranteed and

5. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 2, pp 238–245

6. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 113

7. *New Zealand Maori Council*, p 665

protected, would have options when settlement and the new society developed. They could choose to continue their tikanga and way of life largely as it was, to assimilate to the new society and economy, or to combine elements of both and walk in two worlds. Their choices were to be free and unconstrained.⁸

1.2.6 Mutual benefit

When the Treaty was signed, both settlers and Maori were expected to obtain or retain the resources necessary for them to develop and prosper in the new, shared nation state. As we shall see, Lord Normanby's instructions (and those of the New Zealand Company to its agent) stated that the true payment for Maori who parted with land would be the rise in value of what they retained, which would enable them to participate fully in the benefits of settlement. The colonisation of New Zealand was thus to be for the mutual benefit of both Maori and settlers, and the retention of sufficient Maori land and resources was acknowledged as a critical factor in achieving that.⁹

1.2.7 Equity

The obligations arising from kawanatanga, partnership, reciprocity, and active protection required the Crown to act fairly to both settlers and Maori – the interests of settlers could not be prioritised to the disadvantage of Maori.¹⁰ Where Maori have been disadvantaged, the principle of equity – in conjunction with the principles of active protection and redress – requires that active measures be taken to restore the balance.

1.2.8 Equal treatment

The principles of partnership, reciprocity, autonomy, and active protection required the Crown to act fairly as between Maori groups – it could not unfairly advantage one group over another if their circumstances, rights, and interests were broadly the same.¹¹

1.2.9 Redress

The Tribunal, in its *Report on the Crown's Foreshore and Seabed Policy*, found:

8. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 195

9. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 891–899, 909–914. For Lord Normanby's instructions to Hobson and the company directors' instructions to Colonel Wakefield, see chapters 4, 5, and 9.

10. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 61–64

11. Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), pp 24–25

Where the Crown has acted in breach of the principles of the Treaty, and Maori have suffered prejudice as a result, we consider that the Crown has a clear duty to set matters right. This is the principle of redress, where the Crown is required to act so as to 'restore the honour and integrity of the Crown and the mana and status of Maori'. Generally, the principle of redress has been considered in connection with historical claims. It is not an 'eye for an eye' approach, but one in which the Crown needs to restore a tribal base and tribal mana, and provide sufficient remedy to resolve the grievance. It will involve compromise on both sides, and, as the Tarawera Forest Tribunal noted, it should not create fresh injustices for others.¹²

We note that, where well-founded grievances have been drawn to the Crown's attention in the past, and it has acknowledged those grievances and attempted remedies – as in the case of 'landless natives reserves', addressed in chapter 7 – we will assess such remedies in light of the principle of redress. In the view of the Privy Council, where the Crown's own actions have contributed to the precarious state of a taonga, there is an even greater obligation for it the Crown to provide generous redress as circumstances permit.¹³

1.3 THE TE TAU IHU INQUIRY PROCESS

1.3.1 Background to the inquiry

In August 1987, the interim committee of the Kurahaupo Waka Trust submitted a claim to the Waitangi Tribunal on behalf of Rangitane and other Kurahaupo iwi (Wai 44). This claim was filed as a cross-claim to the Ngai Tahu claim (Wai 27), which was then being heard by the Tribunal.¹⁴ The Tribunal decided in June 1988 that Wai 44 would be treated 'as a claim in its own right' and would be heard 'in due course on its own, after resolution of any boundary issues'.¹⁵

Discussions were also taking place at this time between Rangitane, Ngati Kuia, Ngati Koata, Ngati Rarua, Ngati Tama, Te Atiawa, Ngati Apa, Ngati Toa, and Ngati Waikauri, which led to the formation of Te Runanganui o te Tau Ihu o te Waka a Maui. In April 1989, the runanganui submitted a claim (Wai 102) to the Tribunal concerning historical issues involving land in Te Tau Ihu. In accordance with the runanganui's intention that its

12. Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), pp134–135

13. Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report* (Wellington: GP Publications, 1999), pp 32, 44, 68; see also Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 29

14. Waitangi Tribunal, direction registering claim Wai 44, 11 August 1987 (paper 2.3); Waitangi Tribunal, memorandum concerning filing of cross-claims in respect of Arahura blocks, 11 August 1987 (paper 2.4); Waitangi Tribunal, memorandum concerning hearing of cross-claims, 25 August 1987 (paper 2.5)

15. Waitangi Tribunal, direction concerning interim decision on Kurahaupo claim, 26 November 1987 (paper 2.7); Waitangi Tribunal, direction concerning Kurahaupo claimants seeking submissions on procedural questions, 23 June 1988 (paper 2.8)

constituent iwi would ‘in due course identify specific claims for their own iwi’, all but Ngati Waikauri eventually submitted discrete claims.¹⁶

In July 1991, Judge James Rota was appointed as the presiding officer to hear these claims.¹⁷ At his first conference in September 1991, Judge Rota drew upon the Maori Appellate Court’s 1990 definition of Ngai Tahu’s takiwa to establish a southern boundary for the inquiry. The appellate court’s ruling was subject to a judicial review by some of the Te Tau Ihu claimants, and Judge Rota directed that the Tribunal would focus on claims north of this line while that litigation was underway.¹⁸

Some research was commissioned following the 1991 conference, but a full programme, largely commissioned by the Crown Forestry Rental Trust, did not begin until 1996. A casebook of research was completed to the level necessary for hearing by 2000.

In 1993, Judge Rota was appointed to the District Court and could not continue as presiding officer. With the casebook nearing completion, Judge Wilson Isaac was appointed presiding officer on 12 May 1999. On 27 August 1999, Roger Maaka, Pamela Ringwood, Professor Keith Sorrenson, and Rangitihī Tahuparae were appointed to the Te Tau Ihu Tribunal.¹⁹ Mr Maaka subsequently stepped down from the inquiry on 24 May 2003, at which date John Clarke was appointed to the panel.²⁰

1.3.2 Procedure

The 31 claims relating to Te Tau Ihu o te Waka were consolidated under the administrative claim number Wai 785. This regional grouping of claims followed the Tribunal’s ‘casebook’ method of inquiry, under which claims within a geographic district are heard concurrently. Relevant research reports are compiled in a casebook, and hearings commence once the casebook is assessed to form a sufficient basis for an inquiry.

Professor Sorrenson approved the Te Tau Ihu casebook on 3 July 2000, following which plans were formulated for hearing the claims.²¹ The claimants indicated that they wished

16. Waitangi Tribunal, direction concerning interim decision on Kurahaupo claim, p 4; Frank McDonald and others, claim Wai 102 concerning Te Runanganui te Tau Ihu o te Waka a Maui, 27 April 1989 (claim 1.3). Ngati Waikauri descend from Waikauri, daughter of Toa Rangatira, who married Koata’s son, Kawharu Te Kihī: Te Utauta Hau, brief of evidence on behalf of Ngati Toa, 9 June 2003 (doc P16), p 14.

17. The claims submitted by this date were the overarching claim (Wai 102), Rangitane’s claim (Wai 44), and Ngati Toa’s claim (Wai 207). The latter was included only in so far as it related to South Island interests: Waitangi Tribunal, direction appointing Judge James Rota presiding officer for claim Wai 102, 11 July 1991 (paper 2.27).

18. Waitangi Tribunal, direction appointing Judge Rota; Waitangi Tribunal, memorandum following 20 September 1991 preliminary conference, 14 November 1991 (paper 2.31)

19. Waitangi Tribunal, directions appointing Judge Wilson Isaac presiding officer, consolidating claims, and establishing combined record of inquiry for northern South Island claims, 12 May 1999 (paper 2.1); Waitangi Tribunal, direction constituting northern South Island Tribunal, 27 August 1999 (paper 2.89)

20. Waitangi Tribunal, direction removing Roger Maaka from, and appointing John Clarke to, northern South Island Tribunal, 24 May 2003 (paper 2.599)

21. Waitangi Tribunal, memorandum following 27 June 2000 telephone conference, 3 July 2000 (paper 2.120); counsel for Wai 594, memorandum concerning venue and timetabling, 28 July (paper 2.125)

TE TAU IHU O TE WAKA A MAUI

1.3.3

to proceed under separate iwi banners, although the umbrella claim, Wai 102, remained as part of the Te Tau Ihu inquiry.²² On the basis of their readiness to proceed, Ngati Rarua were allocated the first two weeks of hearing, proposed for August and October 2000.²³

To facilitate an efficient hearing process, the Te Tau Ihu Tribunal required claimants to submit particularised statements of claim and the Crown to submit statements in response at set dates prior to hearing.²⁴ It was intended that this would provide the Tribunal with a detailed account of the issues pertinent to each claim and the Crown's view on those issues. This would enable all the parties and the Tribunal to focus on key issues during the hearings and to identify those that were in dispute.

This procedure was only moderately successful because the Crown would not provide a full statement of response to the individual iwi, preferring to file a broad statement of 'issues of relevance for the Crown in respect of the entire inquiry'.²⁵ The Crown also stated its preference not to give a full exposition of its position until all claimant evidence had been heard.

Another significant issue that we faced was Ngai Tahu's role in the inquiry and their challenge to the Tribunal's jurisdiction to hear claims south of the (by this time) statutorily defined boundary. This issue is covered in chapters 3 and 13, and we elaborate no further on it here.

1.3.3 The hearing process

Set out in table 1 is a schedule of the hearings undertaken in this inquiry.

1.4 THE INQUIRY DISTRICT

The hearings focused on issues pertaining to land within Te Tau Ihu, but the inquiry was not exclusively contained within these boundaries. The hearings also considered the claims of a

22. Pene Ruruku, letter concerning status of claim Wai 102, 10 June 1999 (paper 2.79); John Mitchell, letter concerning status of claim Wai 102, 10 June 1999 (paper 2.80); Waitangi Tribunal, direction following 17 June 1999 conference, 23 June 1999 (paper 2.85); chairperson of Ngati Rarua Iwi Trust, letter clarifying Ngati Rarua's representation and status of claim Wai 102, 29 June 1999 (paper 2.86); chairperson of Te Atiawa Manawhenua ki te Tau Ihu Trust, letter requesting claim Wai 102 be retained, 28 August 1999 (paper 2.90); counsel for the Ngati Tama Manawhenua ki te Tau Ihu Trust, memorandum requesting claim Wai 201 be retained and giving notice of intention to file amendment to claim, 30 August 1999 (paper 2.91); counsel for Wai 723, memorandum concerning casebook deadline, report confidentiality, and claim Wai 102, 18 February 2002 (paper 2.102); counsel for Wai 207, memorandum concerning Wai 207 position in relation to claim Wai 102, 20 March 2000 (paper 2.105A)

23. Waitangi Tribunal, memorandum following 27 June 2000 telephone conference; counsel for Wai 594, memorandum concerning venue and timetabling, 28 July (paper 2.125)

24. Waitangi Tribunal, memorandum following 27 April 2000 pre-hearing conference, 4 May 2000 (paper 2.117)

25. Crown counsel, memorandum in response to amendment to claim Wai 594, 28 July 2000 (paper 2.124)

INTRODUCTION

1.4

Hearing	Venue	Date
1. Ngati Rarua	Wesley Centre, Blenheim	21–25 August 2000
<i>Six-month gap following Ngai Tahu's challenge to the Waitangi Tribunal's jurisdiction</i>		
2. Ngati Rarua	Motueka War Memorial	12–16 February 2001
3. Ngati Koata	Whakatu Marae, Nelson	26 February – 2 March 2001
<i>A gap of 15 months for litigation to resolve the question of the Tribunal's jurisdiction, after which the Tribunal decided to hear generic issues of relevance to all iwi before resuming its iwi-specific hearings</i>		
4. Generic hearing	Nelson	10–14 June 2002
	West Plaza, Wellington	25–26 July 2002
5. Generic hearing	Nelson	24 September 2002
6. Te Atiawa	St Thomas Church, Motueka	9–13 December 2002
7. Te Atiawa	Te Atiawa Marae, Picton	27–31 January 2003
8. Generic issues and whanau claims	Seifrieds Winery, Nelson	17–19 February 2003
9. Ngati Tama	Pohiaka Hall, Takaka	16–21 March 2003
10. Ngati Kuia–Ngati Tutepourangi	Seifrieds Winery, Nelson	6–11 April 2003
11. Rangitane	Rangitane Runanga, Grovetown	5–9 May 2003
12. Ngati Apa	Omaka Marae, Blenheim	26–29 May 2003
13. Wakatu Incorporation	Seifrieds Winery, Nelson	11–13 June 2003
14. Ngati Toa Rangatira	Takapuwahia Marae, Porirua	23–27 June 2003
		22 July 2003
15. Te Tau Ihu claims inside the statutory Ngai Tahu takiwa	Brancott Winery, Blenheim	5–8 August 2003
16. Ngati Awa and whanau claims	Seifrieds Winery, Nelson	25–26 August 2003
17. Ngai Tahu	Omaka Marae, Blenheim	13–17 October 2003
18. Crown	Whakatu Marae, Nelson	17–20 November 2003
19. Closing submissions	Rutherford Hotel, Nelson	23–26 February 2004
	West Plaza, Wellington	1–3 March 2004
		4 March 2004

Table 1: Schedule of hearings

number of the iwi of Te Tau Ihu within the Ngai Tahu statutory takiwa (see fig 1). Events in the lower North Island, particularly those involving Ngati Toa, significantly affected developments in Te Tau Ihu in the 1840s and 1850s, and it was therefore important for the Tribunal to develop an understanding of this context. Such an understanding was especially relevant for the inquiry into the New Zealand Company transactions and mid-nineteenth century Crown purchases. Lower North Island issues, however, were not the focus of this inquiry

TE TAU IHU O TE WAKA A MAUI

1.5

and have been, or will be, considered in other inquiries. The Tribunal's *Te Whanganui a Tara me ona Takiwa* report addressed claims relating to the Wellington district.²⁶

A number of the iwi with claims in Te Tau Ihu have also lodged claims with respect to interests in the North Island. With the exception of Ngati Toa, these claims are distinct and separate from claims within the South Island.

1.5 THE CLAIMS

1.5.1 The pan-iwi claim, Wai 102

As outlined at section 1.3.1, Te Runanganui o te Tau Ihu o te Waka a Maui represented the collective claim on behalf of iwi with interests in the northern South Island and coordinated the various iwi claims in anticipation of iwi setting up their own discrete claims.

This overarching claim concerns the Crown's investigation of customary interests, Crown purchasing, the retention of sufficient land and resources, and the impact of legislation (most particularly that relating to the Native Land Court).²⁷

1.5.2 Iwi claims

The Maori iwi and hapu of Te Tau Ihu have described their identity in the following terms:

- ▶ Rangitane, Ngati Apa, and Ngati Kuia are descendants of the captain and crew of the Kurahaupo waka. They were the tangata whenua of Te Tau Ihu in the 1820s and 1830s, when the Kawhia–Taranaki tribes migrated to the district.
- ▶ Ngati Toa Rangatira, Ngati Rarua, Ngati Koata, Ngati Tama, and Te Atiawa migrated to Te Tau Ihu in the 1820s and 1830s from their original rohe in the Kawhia and Taranaki districts. Some have affiliations to the Tainui waka, others to the Tokomaru waka. Ngati Koata settled as a result of a tuku from Tutepourangi, an ariki of the Kurahaupo tribes. The other northern iwi migrated after a series of battles and victories, and settled alongside Ngati Koata and the defeated Kurahaupo peoples.

There has been intermarriage between all eight iwi, and they are bound together by whakapapa, co-residence, and overlapping customary rights. One registered claim, Wai 102, was presented on behalf of all of them to ensure that all descendants of the eight tribes were included in the claims process. In addition, relationships are complex and there is some competition between the iwi, each of which has filed its own overarching claim.

26. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003)

27. Frank McDonald and others, claim Wai 102

(1) Rangitane, Wai 44

With interests that centre on the Wairau and the Marlborough region, Te Runanga a Rangitane o Wairau (Wai 44) claim that the Spain commission's inquiry was inadequate and failed to acknowledge their interests, faults that were replicated in the Crown's Wairau (1847) and Waipounamu (1853–56) purchases. Rangitane state that they were left with inadequate reserves, most notably at the Wairau, which they were not able to manage and control as a tribe and which were not protected from further alienation. Their claim also relates to the Crown's alleged failure to uphold a promise of collateral benefits (such as schools and hospitals), and the loss of customary fisheries and other taonga. They also have specific grievances about the impact of the Native Land Court, the South Island Landless Natives Act 1906, and the Maori Appellate Court decision of 1990.²⁸

(2) Ngati Apa, Wai 521

The Ngati Apa ki te Waipounamu Trust (Wai 521) claims interests throughout the northern South Island, particularly in the west. Ngati Apa state that the recognition of their interests in the Arahura purchase was inadequate and that their interests were disregarded both by the Spain commission and during the Waipounamu purchase. The claim also concerns the processes of the Native (later, Maori) Land Court and the Maori Appellate Court and the Crown's settlement process with Ngai Tahu. Ngati Apa assert that they were left with inadequate reserves by the Crown's purchasing process and the South Island Landless Natives Act 1906. The claim also encompasses social, health, and economic issues and issues surrounding the seabed and marine farming.²⁹

(3) Ngati Kuia, Wai 561

Ngati Kuia claim interests over much of Te Tau Ihu, with a primary sphere of influence centring on Tasman Bay and the Marlborough Sounds. Their claim, Wai 561, relates to the alienation of land and other resources by the New Zealand Company and the Spain commission; their exclusion from the Nelson tenths; Crown purchases in the Wairau, Kaikoura, and Arahura; and the Waipounamu purchase. Ngati Kuia claim that they were left with inadequate land and resources. The claim concerns landless natives reserves; the Native Land Court; issues surrounding natural resources and the environment; marine and customary fisheries; and socio-economic and health issues. It also alleges a lack of consultation by the Crown prior to alienating land to overseas investors.³⁰

Ngati Tutepourangi, a hapu of Ngati Kuia, submitted a separate but related claim, Wai 829, concerning a lack of sufficient local reserves and the landless native reserves policy,

28. Mervyn Sadd and others, fifth amendment to claim Wai 44, 6 August 1987 (claim 1.1(f))

29. Kathleen Hemi, amendment to claim Wai 521, 9 June 1995 (claim 1.10(a))

30. Peter Hemi and others, second amendment to claim Wai 561, 13 March 2003 (claim 1.11(b))

TE TAU IHU O TE WAKA A MAUI

1.5.2(4)

under which Ngati Tutepourangi were allocated land in Rakiura (Stewart Island). The claim also alleges that the Native Land Court failed to recognise Ngati Tutepourangi's interests in Wakapuaka, Tasman Bay.³¹ Wai 829 was heard by the Tribunal alongside Wai 561 in April 2003.

(4) Ngati Toa, Wai 207

The Ngati Toa Rangatira claim, Wai 207, extends over both the lower North Island and the northern South Island, including sites of occupation in Cloudy Bay and the Wairau, which Ngati Toa state was their domain in 1840. Ngati Toa claim that the Crown deliberately undermined their authority through the New Zealand Company purchases and the Spain commission, the 1843 Wairau conflict, military action during the 1840s, and Crown purchases in Porirua, the Wairau, and Waipounamu. Other issues encompassed in the claim include the 1880 investigation into the Ngati Toa Trust, the imposition of the Native Land Court, the allocation of interests in the Wellington and Nelson tenths, reserves policy in the Wairau and elsewhere, coastal management and fisheries, environmental issues, public works takings, and socio-economic impacts.³²

We have not inquired into Ngati Toa's claim outside Te Tau Ihu, and we discuss North Island issues only to the extent that they impacted on Ngati Toa's claim in Te Waipounamu.

(5) Ngati Koata, Wai 566

The Ngati Koata Trust claim, Wai 566, is based on a *tuku* by the Ngati Kuia rangatira Tutepourangi. Ngati Koata's interests focus on Rangitoto ki te Tonga (D'Urville Island) and its islands and land to the south and west of Rangitoto but extend throughout Te Tau Ihu. Ngati Koata claim that they were excluded both from developments in Nelson and from the benefits of settlement. The claim relates to deficiencies in the Spain commission's inquiry, the 'blanket' Waipounamu purchase, and the inadequacy of reserves, which were not protected from alienation. In particular, Ngati Koata point to the loss of Wakapuaka and Rangitoto lands. Their claim also relates to the compulsory taking of Takapourewa (Stephens Island); the loss of access to fisheries; the administration of the tenths estate; and social, economic, and political impacts.³³

(6) Ngati Rarua, Wai 594

Ngati Rarua claim interests in the Wairau, Nelson province, and the West Coast. The Ngati Rarua Trust's claim, Wai 594, concerns the New Zealand Company transactions, the Spain commission, the Crown's Wairau and Waipounamu purchases, and the inadequacy of reserves for development or subsistence. Specific reserves issues involve Taitapu,

31. Te Kenehi Teira and another, amendment to claim Wai 829, 13 March 2003 (claim 1.18(b))

32. Akuhata Wineera and others, fourth amendment to claim Wai 207, 21 May 2003 (claim 1.7(d))

33. James Elkington and others, amendment to claim Wai 566, 10 November 2000 (claim 1.12(a))

Whakarewa, and other Motueka reserves, the Wairau, and the Crown's administration of, and Native Land Court adjudication on, the tenths. The claim also concerns the Wairau development scheme, protective works at the Wairau Valley, and the exclusion of interests on the West Coast through the 1990 Maori Appellate Court decision on the boundary and the Crown's subsequent settlement with Ngai Tahu.³⁴

(7) Ngati Tama, Wai 723

The Ngati Tama ki te Tau Ihu claim, Wai 723, encompasses the central and western areas of Te Tau Ihu. Ngati Tama's claim is principally founded on developments in the 1840–56 period, including the New Zealand Company transaction, the Spain commission, the alienation and administration of the tenths reserves, Whakarewa, and Crown purchases in the Wairau and Waipounamu. The claim also relates to public works takings; Crown policy on gold and other minerals; the imposition of the Native Land Court; and the losses of customary rights, land, forests, waterways, mahinga kai, te reo, and tikanga. Ngati Tama claim that the Crown failed to ensure the retention of sufficient land. The claim also concerns contemporary resource management and conservation issues and relations with local authorities.³⁵

(8) Te Atiawa, Wai 607

Te Atiawa claim interests in western Te Tau Ihu and Totaranui (Queen Charlotte Sound). The Te Atiawa Manawhenua ki te Tau Ihu Trust claim, Wai 607, relates to the loss of land and authority through the New Zealand Company transactions and the Spain commission, the tenths, the Nelson settlement, and Crown purchasing. Te Atiawa allege that they were left with insufficient reserves, which were then processed by the Native Land Court, and that public works takings, such as for the Waikawa rifle range, adversely affected them. The claim encompasses contemporary environmental, marine resource, and customary fisheries and socio-economic issues.³⁶ As we shall see shortly, a number of whanau and specific claims were associated with the Te Atiawa claim.³⁷

1.5.3 The Wakatu Incorporation claim, Wai 56

The Wakatu Incorporation claim, Wai 56, was lodged on behalf of 'the descendants of the original owners of the Nelson Tenths Estate.'³⁸ The claim relates to the alleged failure to fulfil

34. Barry Mason and others, second amendment to claim Wai 594, 7 March 2003 (claim 1.13(b))

35. Janice Manson and others, amendment to claim Wai 723, 13 March 2003 (claim 1.16(a))

36. Jane Du Feu and others, first amendment to claim Wai 607, 8 November 2001 (claim 1.14(a)); Jane Du Feu and others, second amendment to claim Wai 607, 8 November 2001 ((claim 1.14(b))); Jane Du Feu and others, third amendment to claim Wai 607, 14 February 2003 (claim 1.14(c))

37. Specifically, Wai 124, Wai 379, Wai 920, Wai 924, Wai 925, Wai 926, and Wai 927: see Ralph Ngatata Love, Neville Gilmore, and others, amendment to claim Wai 379, 24 January 2002 (claim 1.29(a)).

38. The 1892 definition of ownership awarded beneficial interests to members of Ngati Rarua, Te Atiawa, Ngati Koata, and Ngati Tama.

1.5.4

promises respecting the extent of the tenths reserves, the subsequent erosion of the tenths estate through public works takings and sales, and the failure of legislation to ensure the fulfilment of trusteeship obligations. The Wakatu claim also points to the impact of the perpetual leasing regime and the failure to implement the 1975 royal commission's recommendations for regular rent reviews.³⁹

1.5.4 Whanau and specific claims

Wai 104 was filed by the Reverend Harvey Whakaruru. This claim relates to the 1853 endowment of native reserve sections to the Anglican Church for Whakarewa School, allegedly against the wishes of Motueka Maori. The claim also concerns recent activities of the Whakarewa School Trust Board.⁴⁰

The Georgeson whanau, members of Te Atiawa ki Motueka Trust, also submitted a claim relating to Whakarewa School. Wai 1002 concerns the original endowment, the failure to return the land when the school closed in 1881, and the extent of interests divested to Ngati Rarua when land was returned in 1993.⁴¹

The Ngawhatu Hospital claim (Wai 822), filed by Sharon Gemmell and others, alleges that the Crown's contemporary policy of protecting and recognising sites of significance is flawed and that it was not followed correctly in the sale of the hospital.⁴²

The sale was due to become unconditional on 9 November 2001, prior to which the Waitangi Tribunal agreed to convene an urgent hearing to consider whether the sites of significance policy had been correctly implemented.⁴³ On 30 October 2001, Judge Isaac, Mr Maaka, and Professor Sorrenson were appointed to the Wai 822 Tribunal.⁴⁴ Following a teleconference amongst parties, the Crown acknowledged the distress that had been caused to Te Atiawa through the sale of the hospital site and agreed to facilitate discussion between parties. Leave was reserved for claimants to return to the Tribunal if an agreement could not be reached. This did not prove necessary. On 23 October 2002, Crown counsel informed counsel for the Wai 822 claimants about the terms of an acceptable settlement.⁴⁵

The Wai 822 Tribunal did not consider the substantive claim that the sites of significance policy was inherently flawed, and this allegation forms part of our inquiry.⁴⁶

39. Rore Stafford and another, amendment to claim Wai 56, 17 February 2003 (claim 1.2(a))

40. Reverend Harvey Ruru, claim Wai 104 concerning Whakarewa School, 2 August 1988 (claim 1.4)

41. Gloria Georgeson, amendment to claim Wai 1002, 7 January 2003 (claim 1.31(a))

42. Sharon Gemmell and others, claim Wai 822 concerning Ngawhatu Hospital, 16 November 1999 (claim 1.17)

43. Deputy chairperson, memorandum granting urgency for hearing of claim Wai 822 on papers only, 13 October 2001 (paper 2.278)

44. Deputy chairperson, memorandum appointing members to Wai 822 Tribunal, 30 October 2001 (paper 2.286)

45. Michael Doogan to Kathy Ertel, 23 October 2002 (Wai 822 ROI, paper 2.43)

46. Waitangi Tribunal, memorandum following 1 November 2001 telephone conference, 6 November 2001 (paper 2.289)

Barbara Duggan's claim, Wai 184, concerns the Crown's purchase of Whangarae 1C in 1973.⁴⁷

Wai 220, filed by Robert Hippolite, relates to a public works taking in Whangamoia in 1964.⁴⁸

The Te Kotua Whanau Trust claim, Wai 648, concerns the Spain commission's inquiry into a pre-Treaty transaction between Nohorua of Ngati Toa and Joseph Toms, the ensuing Crown grants and the Crown's alleged failure to recognise Toms' sons as beneficiaries to his estate.⁴⁹

The Stafford whanau claim, Wai 1043, relates to a Maori Land Court decision in 1920 in respect of succession to interests in Wainui sections 13 and 14.⁵⁰

1.5.5 Te Atiawa whanau and specific claims

Wai 379, filed by Ralph Love, Neville Gilmore, and others, is a Te Atiawa claim relating specifically to the Marlborough Sounds and associated area. Wai 379 concerns Crown purchasing, public works and scenic reserves takings, and the loss of access to land and sea resources.⁵¹

The Tahuaroa whanau claim, Wai 124, concerns a foreshore reserve at Onauku, which the claimants allege is not being properly maintained and protected by the Department of Conservation (DOC).⁵²

The Parana whanau claim, Wai 830, concerns occupational reserves at Sandy Bay and Motueka. It relates to the perpetual lease of Sandy Bay section 27 and its subsequent transfer into the Wakatu Incorporation and the alienation of Motueka section 157 through the Maori Trustee.⁵³

The Love whanau claim, Wai 851, relates to the Crown's purchase of Waitohi, its alleged failure to protect marine resources, and issues surrounding Waikawa.⁵⁴

Public works takings in Waikawa are the subject of claims filed by Rita Powick (Wai 920), Ngaire Noble (Wai 921), and Laura Bowdler (Wai 927).⁵⁵ Wai 924, filed by Victor Keenan,

47. Barbara Duggan, claim Wai 184 concerning Whangarae 1C, 12 December 1990 (claim 1.6)
48. Robert Hippolite, claim Wai 220 concerning Cape Soucis land, 31 March 1987 (claim 1.8)
49. Grace Saxton, amendment to claim Wai 648, 23 July 2002 (claim 1.15(a))
50. Wiremu Tapata Stafford, claim Wai 1043 concerning loss of ancestral land, 12 February 2003 (claim 1.32)
51. Ralph Love, Neville Gilmore, and others, claim Wai 379 concerning Marlborough Sounds and Picton, 24 August 1993 (claim 1.29)
52. Neville Tahuaroa, claim Wai 124 concerning Waikawa lands, 8 February 1990 (claim 1.5)
53. Ngawaina Shorrocks, amendment to claim Wai 830, 8 October 2002 (claim 1.19(a))
54. Matthew Love and others, amendment to claim Wai 851, 14 February 2003 (claim 1.20(a))
55. Rita Powick, claim Wai 920 concerning Waikawa block, [2000] (claim 1.21); Ngaire Noble, claim Wai 921 concerning Waikawa 1 block, [2000] (claim 1.22); Laura Bowdler, claim Wai 927 concerning Waikawa Village block, [2000] (claim 1.28)

TE TAU IHU O TE WAKA A MAUI

1.5.5

also concerns public works takings at Waikawa and other places and the Crown's acquisition of scenic reserves.⁵⁶

The Grennell whanau claim, Wai 922, relates to the Maori Trustee's sale of Kuini Watson's land and her enforced separation from her daughters, who were placed with Pakeha families.⁵⁷

The claim by Patrick David Takarangi Park, Wai 923, concerns tenths reserves in Motueka, the impact of rating policies and local government takings, and the return of Whakarewa School land.⁵⁸

Mary Barcello's claim, Wai 925, relates to the Crown's purchase of islands in Anatohia Bay, scenic reserves at Ngaturu and Torea, and the public works taking for the Waikawa rifle range.⁵⁹

Sharon Gemmell's claim, Wai 926, concerns the Maori Land Court's 2000 order concerning Anatohia 90B2.⁶⁰

Wai 956, submitted on behalf of the descendants of the Warren Pahia and Joyce Te Tio Stephens Whanau Trust, relates to succession to shares in the Wakatu Incorporation and in Parinihinihi ki Waitotara (Taranaki).⁶¹

1.5.5 Claims not reported on here

In February 1995, Edward Chambers submitted a claim on behalf of Ngati Awa (Wai 469), and we heard evidence for it in August 2003. The claim was subsequently removed from the Wai 785 record and the register of claims because we found that the kin group and claim represented in Wai 469 were identical to those represented by the Te Atiawa Manawhenua ki te Tau Ihu Trust. As we stated in our decision of 17 October 2003, 'Our view on Mr Chambers' claim is that there is no distinction between Ngati Awa and Te Atiawa in terms of kin.'

Under section 7 of the Treaty of Waitangi Act 1975, the Tribunal is authorised not to inquire further into a claim if, in its opinion, the subject matter of the claim is trivial; the claim is frivolous, vexatious, or not made in good faith; or an adequate remedy already exists. In our opinion, Wai 469 was trivial and the only difference between Ngati Awa and Te Atiawa was the name. We also considered that there was an existing avenue for an adequate remedy: namely, working 'under the auspices of the claim of the great majority of the

56. Victor Keenan, claim Wai 924 concerning Kinana Waikawa Village, [2000] (claim 1.25)

57. Mabel Grennell, claim Wai 922 concerning taking of land from Kuini Watson and social policy, not dated (claim 1.23)

58. Patrick David Takarangi Park, claim Wai 923 concerning Motueka reserves, 29 September 1999 (claim 1.24)

59. Mary Barcello, claim Wai 925 concerning Anatohia Bay, [2000] (claim 1.26)

60. Sharon Gemmell, claim Wai 926 concerning the Maori Land Court, [2000] (claim 1.27)

61. Mariana Ikin, claim Wai 956 concerning section 38(1) of the Maori Affairs Amendment Act 1967 and section 77 of the Administration Act 1969, 20 July 2001 (claim 1.30)

kin group, Wai 607.⁶² In June 2004, Mr Chambers sought a judicial review of our decision, but this application was dismissed by Justice Wild in his judgment of 30 March 2005.⁶³

On 13 March 2003, the Tribunal registered the claim of Te Runanga a Rangitane o Kaituna Incorporation.⁶⁴ The Wai 1047 claimants applied to be included in the Te Tau Ihu inquiry, but we declined this application on 20 August 2003, believing that the Tribunal was not the appropriate forum for what we assessed to be an internal mandating dispute. Further, we did not accept that the Wai 1047 claimants had a distinct whakapapa from Rangitane o Wairau (Wai 44).⁶⁵ On 3 October 2003, Judge Isaac instructed the registrar to remove the Wai 1047 claim from the register of claims pursuant to section 7(b) and (c) of the Treaty of Waitangi Act 1975.⁶⁶

1.6 THE CONTENTS OF THE REPORT

We open our report with an examination of the issues surrounding customary rights. In chapters 2 and 3, we provide our interpretation of the customary history and rights of the claimants, as described to us in the evidence of their tangata whenua experts, their historians, and other historians. We outline both our view of customary law as it relates to the rights of conquerors and of still-occupant defeated peoples and our findings as to the nature and distribution of customary rights amongst the claimant iwi. Chapter 2 focuses on rights within the Te Tau Ihu district and chapter 3 considers rights within the statutory Ngai Tahu takiwa.

Chapter 4 considers the New Zealand Company's transaction in Te Tau Ihu and the Crown's response to it. After setting the scene with a discussion of the relations between local Maori and the first Pakeha explorers and settlers, we examine the impact of the arrival of company and Crown representatives in the district. The chapter focuses on the Spain commission's investigation into the company's 1844 transaction.

Chapters 5 and 6 address the issues surrounding the Crown's purchases and its assertion of authority over the region. Chapter 5 looks at the relationship between the Crown and Ngati Toa during the 1840s, the Wairau transaction of 1847, and the Crown grant to the New

62. Waitangi Tribunal, memorandum concerning status of claim Wai 469, 17 October 2003 (paper 2.736); Waitangi Tribunal, memorandum amending 17 October 2003 memorandum, 21 November 2003 (paper 2.736(a))

63. *Chambers v Waitangi Tribunal* unreported, 30 March 2005, Wild J, High Court, Wellington, CIV2004-485-1170

64. Waitangi Tribunal, memorandum directing registration of claim Wai 1047, 13 March 2003 (paper 2.552)

65. Counsel for Wai 1047, memorandum concerning application for hearing time, 28 March 2003 (paper 2.557); Waitangi Tribunal, direction concerning Te Runanga a Rangitane o Kaituna, 20 August 2003 (paper 2.685)

66. Waitangi Tribunal, memorandum directing removal of claim Wai 1047 from register, 3 October 2003 (paper 2.731)

Zealand Company in 1848. Chapter 6 then examines the Crown's purchasing programme in Te Tau Ihu over the following decade.

By 1860, there was little land in Te Tau Ihu still in Maori hands. Chapters 7, 8, and 9 focus on the subsequent history of this land. There were effectively three categories of land in which Te Tau Ihu Maori retained an interest from this date: the 'occupation reserves' (that is, the land which Maori retained as reserves during the Crown purchases of the 1840s and 1850s); land which was not included in the blanket Crown purchases, title to which was defined by the Native Land Court; and the tenths reserve, which originated with the New Zealand Company transaction and which the Crown held in trust for those who had dealt with the company.

Chapter 7 focuses on the occupation reserves, considering their adequacy and their alienation. The chapter discusses the efficacy of the solution to landlessness proposed by the South Island Landless Natives Act 1906. Chapter 8 examines the fate of the land excluded from the blanket purchases and the impact of the Native Land Court on these blocks. In chapter 9, we discuss the tenths reserves, considering the establishment of the tenths trust and the administration of the estate by a succession of authorities, including the Maori Trustee. Chapter 9 also addresses issues surrounding the 1892 Native Land Court case to define beneficiaries to the tenths reserves and the eventual creation of the Wakatu Incorporation.

In chapter 10, we discuss the socio-economic circumstances of iwi in Te Tau Ihu and the Crown's response to these through the late nineteenth and twentieth centuries. Chapter 11 addresses natural resource and environmental issues, while chapter 12 concerns whanau and specific claims not discussed in previous chapters.

Chapter 13 considers the Crown's treatment of Te Tau Ihu Maori's customary rights in the Ngai Tahu takiwa during the Treaty settlement process with Ngai Tahu. We examine the Crown's role in the Maori Appellate Court's definition of the boundary between Te Tau Ihu iwi and Ngai Tahu in 1990, and we consider the Crown's subsequent reliance on this decision in its negotiations and settlement with Ngai Tahu and in the associated legislation, the Te Runanga o Ngai Tahu Act 1996 and the Ngai Tahu Settlement Act 1998.

The concluding chapter, chapter 14, summarises our key findings and outlines our recommendations for the settlement of the claims.