

Time to move beyond grievance in Treaty relationship, Tribunal says. Waitangi Tribunal 2 July 2011
New Zealand is at a crossroads in race relations and in its quest for a mature sense of national identity as a result of the settlements of historical Maori land grievances and tribal economic renewal, along with growth in Maori population and other social changes, according to The Waitangi Tribunal's report into the Wai 262 claim, released July 2.

This landmark report from the Tribunal set up to resolve historic grievances over the seizure of land, recommends wide-ranging reforms to laws and policies affecting Maori culture and identity and calls for the Crown-Maori relationship to move beyond grievance to a new era based on partnership. *Ko Aotearoa Tenei* (This is Aotearoa or This is New Zealand) is the Tribunal's first whole-of-government report, addressing the work of more than 20 government departments and agencies. It is also the first Tribunal report to consider what the Treaty relationship might become after historical grievances are settled, and how that relationship might be shaped by changes in New Zealand's demographic makeup over the next 30 to 40 years. More than 170 years after the Treaty, the country still seems to bear the burden of mutually felt attitudes from its colonial past, with Maori feeling that their culture is marginalised, while non-Maori fear that Maori will acquire undeserved privileges at their expense. Yet these fears mask an underlying good will and mutual respect between New Zealand's founding cultures. This has made the process of settling historical grievances possible, and is reflected in the increasing acknowledgement that Maori identity and culture is now a vital aspect of New Zealand identity and culture. New Zealand, the Tribunal says, is beginning a transition to a new and unique national identity. But for this transition to succeed, Over the next decade or so, the Crown-Maori relationship, still currently fixed on Maori grievances, must shift to a less negative and more future focused relationship at all levels. The relationship must change

from the familiar late 20th-century partnership built on the notion that the perpetrators successor must pay the victims successor for the original colonial sin, into a 21st-century relationship of mutual advantage in which, through joint and agreed action, both sides end up better off than they were before they started. This is the Treaty of Waitangi beyond grievance. The Tribunal said that the Treaty envisages the Crown-Maori relationship as a partnership, in which the Crown is entitled to govern but Maori retain *tinio rangatiratanga* (full authority) over their *taonga* (treasures). This partnership framework provides the way forward for the Crown-Maori relationship. But, in many respects, current laws and government policies fall short of partnership, instead marginalising Maori and allowing others to control key aspects of Maori culture. This leads to a justified sense of grievance and also limits the contribution Maori can make to national identity and to New Zealand's economy. Current laws, for example, allow others to commercialise Maori artistic and cultural works such as *haka* and *ta moko* without *iwi* or *hapu* (tribal or family) acknowledgement or consent. They allow scientific research and commercialisation of indigenous plant species that are vital to *iwi* or *hapu* identity without input from those *iwi* or *hapu*. They allow others to use traditional Maori knowledge without consent or acknowledgement. They provide little or no protection against offensive or derogatory uses of Maori artistic and cultural works.

And they sideline Maori and Maori cultural values from decisions of vital importance to their culture for example, decisions about the flora, fauna and wider environment that created Maori culture, and decisions about how education, culture and heritage agencies support the transmission of Maori culture and identity. *Iwi* and *hapu* are therefore unable to fulfil their obligations as *kaitiaki* (cultural guardians) towards their *taonga* yet these *kaitiaki* obligations are central to the survival of Maori culture. *Ko Aotearoa Tenei* recommends reform of laws, policies or practices relating to health, education, science, intellectual property, indigenous flora and fauna, resource management,

conservation, the Maori language, arts and culture, heritage, and the involvement of Maori in the development of New Zealand's positions on international instruments affecting indigenous rights. These recommendations include law changes and the establishment of new partnership bodies in several of these areas.

These reforms aim to establish genuine partnerships in which Maori interests and those of other New Zealanders are fairly and transparently balanced. It is time to move forward, the Tribunal said. As a nation New Zealand should shift its view of the Treaty from that of a breached contract, which can be repaired in the moment, to that of an exchange of solemn promises made about ongoing relationships. There is a growing community realisation that New Zealand wins when Maori culture is strong. There is an opportunity to take this a stage further through genuine commitment to the principles of the Treaty... Such a commitment will not only fulfil at last the promise that was made when the Crown and *tangata whenua* (indigenous - literally people of the land) entered their partnership at Waitangi. It will also pave the way for a new approach to the Treaty relationship: as a relationship of equals, each looking not to the grievances of the past but with optimism to a shared future. It is, in other words, time to perfect the partnership.

Wai 262: Questions & Answers

What is the Wai 262 claim? Wai 262 is the 262nd claim registered with the Waitangi Tribunal. The claim was lodged on 9 October 1991 by six claimants on behalf of themselves and their iwi: Haana Murray (Ngati Kuri), Hema Nui a Tawhaki Witana (Te Rarawa), Te Witi McMath (Ngati Wai), Tama Poata (Ngati Porou), Kataraina Rimene (Ngati Kahungunu), and John Hippolite (Ngati Koata).

What is the claim about? The claim is about the place of Maori culture, identity and traditional knowledge in New Zealand's laws, and in government policies and practices. It concerns who controls Maori traditional knowledge, who controls artistic and cultural works such as haka and waiata, and who controls the

environment that created Maori culture. It also concerns the place in contemporary New Zealand life of core Maori cultural values such as the obligation of iwi and hapu to act as kaitiaki (cultural guardians) towards taonga (treasured things) such as traditional knowledge, artistic and cultural works, important places, and flora and fauna that are significant to iwi or hapu identity.

How significant is this inquiry?

The Wai 262 inquiry is one of the most complex and far-reaching in the Tribunal's history. It is the Tribunal's first whole-of-government inquiry. It is also the first Tribunal inquiry to specifically address the Treaty relationship beyond the settlement of historical grievances.

What does the Treaty say about Maori culture and identity?

The Treaty established a partnership between Maori and the Crown. Through this partnership, the Crown won the right to govern and enact laws, but that right was qualified by the guarantee of tino rangatiratanga (full authority) for iwi and hapu over their taonga katoa (all their treasured things). This requires the Crown, as far as practicable, to ensure that iwi and hapu have authority over taonga such as those referred to above, which are core aspects of Maori culture and identity. The Tribunal recognises that in a modern New Zealand context full authority will not always be possible, and that the interests of iwi and hapu will instead have to be balanced alongside the interests of other New Zealanders. See *Ko Aotearoa Tenei: Te Taumata Tuatahi*, introduction (pages 15-24) for a more detailed explanation of what the claim is about and what the Treaty relationship requires.

Is the Wai 262 inquiry about historical claims? No. Though the claimants raised historical issues, the Tribunal felt that in general they were better considered in district inquiries. The Wai 262 inquiry has therefore focused largely on contemporary relationships between the Crown and Maori. That does not mean history has been ignored. Many contemporary issues arise from historical actions such as the loss of tribal land and Crown suppression of the Maori language and culture through the

education system and laws such as the Tohunga Suppression Act. But in general the focus of the Tribunal's findings and recommendations is on the contemporary relationship between the Crown and Maori, not on past grievances.

What has the Tribunal recommended? The Tribunal's recommendations can be found in each chapter of *Ko Aotearoa Tenei*. But they include:

- the establishment of new partnership bodies in education, conservation, and culture and heritage; a new commission to protect Maori cultural works against derogatory or offensive uses and unauthorised commercial uses; a new funding agent for matauranga Maori in science; and expanded roles for some existing bodies including Te Taura Whiri (the Maori Language Commission), the newly established national rongoa body Te Paepae Matua mo te Rongoa, and Maori advisory bodies relating to patents and environmental protection.
- improved support for rongoa Maori (Maori traditional healing), te reo Maori, and other aspects of Maori culture and Maori traditional knowledge
- amendments to laws covering Maori language, resource management, wildlife, conservation, cultural artifacts, environmental protection, patents and plant varieties, and more.

Who is the Tribunal?

The Waitangi Tribunal is a permanent commission of inquiry. It was established to consider and make recommendations on claims brought by Maori about Crown acts or omissions that breach the promises made in the Treaty. The Tribunal was established in 1975 by the Treaty of Waitangi Act.

The Wai 262 panel comprised Justice Joe Williams (presiding officer), Keita Walker, Pamela Ringwood and Roger Maaka.

Why has the report taken so long to complete?

There are many reasons. Initially, priority was given to district

hearings in order to support the process of settling historical Treaty grievances, so the Tribunal did not begin hearing the claim until some years after it was lodged. Subsequently, arguments between the Crown and claimants about the scope of the claim, the ill health of the first presiding officer, the extraordinary breadth and complexity of the claim, the need to keep up with an ever-changing law and policy environment, and competing priorities have all contributed to the time the inquiry has taken. - <http://www.waitangi-tribunal.govt.nz/doclibrary/public/reports/generic/Wai0262/Wai262mediarelease2July2011.pdf>
<http://www.waitangi-tribunal.govt.nz/news/media/wai262.asp>