

**Time to Move beyond Grievance in Treaty Relationship
Tribunal Says**

2 July – The Waitangi Tribunal today released its report into the Crown's claim, recommending wide-ranging reforms to laws and policies affecting Māori culture and identity and calling for the Crown-Māori relationship to move beyond grievance to a new era based on partnership.

Ko Aotearoa Tēnei ('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.

The Tribunal found that, as a result of historical settlements and the resulting tribal economic renewal, along with growth in the Māori population and other social changes, 'New Zealand sits poised at a crossroads both in race relations and on our long quest for a mature sense of national identity'.

More than 170 years after the Treaty, 'We still seem to bear the burden of mutually felt attitudes from our colonial past', with Māori feeling that their culture is marginalised, while non-Māori fear that Māori 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 'Māori 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-Māori relationship, still currently fixed on Māori grievances, must shift to a less negative and more future focused relationship at all levels.'

The relationship must change 'from the familiar late-twentieth century partnership built on the notion that the perpetrator's successor must pay the victim's successor for the original colonial sin, into a twenty-first 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-Māori relationship as a partnership, in which the Crown is entitled to govern but Māori retain *tino rangatiratanga* (full authority) over their *taonga* (treasures). This partnership framework provides the way forward for the Crown-Māori relationship.

But, in many respects, current laws and government policies fall short of partnership, instead marginalising Māori and allowing others to control key aspects of Māori culture. This leads a justified sense of grievance, and also limits the contribution Māori can make to national identity and to New

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Zealand's economy.

Current laws, for example, allow others to commercialise Māori artistic and cultural works such as haka and tā moko without iwi or hapū acknowledgement or consent. They allow scientific research and commercialisation of indigenous plant species that are vital to iwi or hapū identity without input from those iwi or hapū. They allow others to use traditional Māori knowledge without consent or acknowledgement. They provide little or no protection against offensive or derogatory uses of Māori artistic and cultural works.

And they sideline Māori and Māori cultural values from decisions of vital importance to their culture – for example, decisions about the flora, fauna and wider environment that created Māori culture, and decisions about how education, culture and heritage agencies support the transmission of Māori culture and identity. Iwi and hapū are therefore unable to fulfil their obligations as kaitiaki (cultural guardians) towards their taonga – yet these kaitiaki obligations are central to the survival of Māori culture.

Ko Aotearoa Tēnei recommends reform of laws, policies or practices relating to health, education, science, intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, and the involvement of Māori 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 Māori interests and those of other New Zealanders are fairly and transparently balanced.

'It is time to move forward,' the Tribunal said:

As a nation we should shift our 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 our ongoing relationships.

There is a growing community realisation that New Zealand wins when Māori culture is strong. We have 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 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 and Answers

What is the Wai 262 claim?

Wai 262 is the 262nd claim registered with the Waitangi Tribunal. It was lodged on 9 October 1991 by six claimants on behalf of themselves and their iwi: Haana Murray (Ngāti Kuri), Hema Nui a Tawhaki Witana (Te

Rarawa), Te Witi McMath (Ngāti Wai), Tama Poata (Ngāti Porou), Kataraina Rimene (Ngāti Kahungunu), and John Hippolite (Ngāti Koata).

What is the claim about?

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

It also concerns the place in contemporary New Zealand life of core Māori cultural values such as the obligation of iwi and hapū 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 hapū 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 Māori culture and identity?

The Treaty established a partnership between Māori 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 hapū over their 'taonga katoa' (all their treasured things).

This requires the Crown, as far as practicable, to ensure that iwi and hapū have authority over taonga such as those referred to above, which are core aspects of Māori 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 hapū will instead have to be balanced alongside the interests of other New Zealanders.

See *Ko Aotearoa Tēnei: 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 Māori.

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 Māori 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 Māori, not on past grievances.

What has the Tribunal recommended?

The Tribunal's recommendations can be found in each chapter of Ko Aotearoa Tēnei. But they include:

- The establishment of new partnership bodies in education, conservation, and culture and heritage; a new commission to protect Māori cultural works against derogatory or offensive uses and unauthorised commercial uses; a new funding agent for mātauranga Māori in science; and expanded roles for some existing bodies including Te Taura Whiri (the Māori Language Commission), the newly established national rongoā body Te Paepae Matua mō te Rongoā, and Māori advisory bodies relating to patents and environmental protection.
- Improved support for rongoā Māori (Māori traditional healing), te reo Māori, and other aspects of Māori culture and Māori traditional knowledge.
- Amendments to laws covering Māori 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 Māori 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.

Report Summary