

1991

Waitangi Tribunal

(Waitangi Tribunal, 2011b)

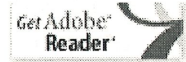
The Ngai Tahu Report 1991

Report Summary

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The narrative that follows will not lie comfortably on the conscience of this nation, just as the outstanding grievances of Ngai Tahu have for so long troubled that tribe and compelled them time and again to seek justice. The noble principle of justice, and close companion honour, are very much subject to question as this inquiry proceeds. Likewise, the other important equities of trust and good faith are called into account and as a result of their breach sadly give rise to well grounded iwi protestations about dishonour and injustice and their companions, high-handedness and arrogance.



The Waitangi Tribunal

The various reports dealing with the Ngai Tahu claims constitute the Tribunal's most exhaustive treatment of an inquiry. The three volumes of the *Ngai Tahu Report 1991* total more than 1200 pages, and the *Sea Fisheries* and *Ancillary Claims* reports add another 400 pages each to the Tribunal's coverage of the issues.

I hereby claim upon the principles of justice, truth, peace and goodwill for and on behalf of my peoples within the principles of the Treaty of Waitangi.

Rakiihia Tau

The Ngai Tahu inquiry began with a claim, Wai 27, registered in August 1986. It was brought by Rakiihia Tau and the Ngai Tahu Maori Trust Board, but as the Tribunal said, it was 'really from and about Ngai Tahu, an amalgam formed from three main lines of descent which flowed together to make the modern tribe'. The inquiry was extensive: over a period of 3½ years, 23 hearings were conducted and the Tribunal received 900 submissions and heard from 262 witnesses and 25 corporate bodies.

The claim was presented in nine parts, known as the 'Nine Tall Trees of Ngai Tahu'. Eight of these 'trees' represented the different areas of land purchased from Ngai Tahu, whilst the ninth represented Ngai Tahu's mahinga kai, or food resources. A number of grievances attached to each of the nine tall trees, and these came to be known as the 'branches of the Nine Tall Trees'. There were also a number of smaller claims, which came to be described as the 'undergrowth', or ancillary, claims.

The Tribunal constituted to hear the claims comprised Deputy Chief Judge Ashley McHugh (presiding), Bishop Manuhuia Bennett, Sir Monita Delamere, Professor Sir Hugh Kawharu, Professor Gordon Orr, Sir Desmond Sullivan, and Georgina Te Heuheu, though Sir Monita died in 1993, before the last of the reports was released. The *Ngai Tahu Report* came out in 1991, the *Ngai Tahu Sea Fisheries Report* in August 1992, and the *Ngai Tahu Ancillary Claims Report* in May 1995.

This claim is not primarily about the inadequacy of price that Ngai Tahu was paid, although as we will see in respect of the North

Canterbury, Kaikoura and Arahura purchases, the claimants strongly criticised the arbitrary imposition and unfavourable terms of the purchase price. Ngai Tahu have certainly a sense of grievance about the paucity of payment they received for their land but then Ngai Tahu have always regarded the purchase price not as a properly assessed market value consideration in the European concept but rather as a deposit; a token, a gratuity. Ngai Tahu understanding and the substance of their expectations was that they agreed to share their resources with the settler. Each would learn from the other. There was an expectation that Ngai Tahu would participate in and enjoy the benefits that would flow from the settlement of their land. As part of that expectation they wished to retain sufficient land to protect their food resources. They expected to be provided with, or to have excluded from the sale, adequate endowments that would enable them to engage in the new developing pastoral and commercial economy.

This claim and this story is about that expectation. Ngai Tahu grievances therefore are directed at the Crown's failure to keep its promises, its failure to provide the reserves, the food resources and the health, educational and land endowments that were needed to give Ngai Tahu a stake in the new economy. This claim is also about Ngai Tahu's comprehension of those areas of land they considered they did not sell to the Crown despite what the written agreements might have said. And of course, this claim is about Ngai Tahu expectations of their rights under the Treaty of Waitangi and how those rights were disregarded by the Crown in its dealings with the tribe.

The Waitangi Tribunal

In the *Ngai Tahu Report*, the Tribunal concluded that many of the grievances arising from the Crown's South Island purchases, including those relating to mahinga kai, were established, and the Crown itself conceded that it had failed to ensure that Ngai Tahu were left with ample lands for their needs. The Tribunal found that, in acquiring more than half the land mass of New Zealand from the tribe for £14,750, which left Ngai Tahu only 35,757 acres, the Crown had acted unconscionably and in repeated breach of the Treaty, and its subsequent efforts to make good the loss were found to be 'few, extremely dilatory, and largely ineffectual'. After the *Ngai Tahu Report* was released, the Tribunal also put out a short supplementary report in which it referred to the need for tribal structures to be put in place to allow Ngai Tahu to conduct remedies negotiations with the Crown. The Tribunal supported the proposals regarding representation that the claimants had made and it recommended that the Ministry of Maori Affairs introduce legislation constituting the Ngai Tahu Iwi Authority as the appropriate legal personality to act on behalf of the iwi in those negotiations.

The *Sea Fisheries Report* dealt with the issue of Ngai Tahu's fisheries, and reported that, as a direct consequence of the loss of their land, Ngai Tahu were 'unable to continue their thriving and expanding business and activity of sea fishing'. The Tribunal found that, in legislating to protect and conserve fisheries resources, the Crown had failed to recognise Ngai Tahu's rangatiratanga over their fisheries and in particular their tribal rights of self-regulation or self-management of their resource. It also found that the quota management system then in place was in fundamental conflict with the terms of the Treaty and with Treaty principles. The Tribunal recommended that the Crown and Ngai Tahu negotiate a settlement of the sea fisheries claim, that an appropriate additional percentage of fishing quota be allocated to Ngai Tahu and that Waihora (Lake Ellesmere) be returned to them as an eel fishery, and that the Fisheries Act