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## The Treaty, Foreshore and more: a full year ahead

### **Nga mihi o te tau hou ki a koutou katoa**

2007 has started with a bang. In our first newsletter for the year, we comment on a range of legislative and other matters that are likely to be relevant to, or impact on, Maori.

### **Treaty claim deadline now law**

The Government's deadline of 2008 for the lodging of all historical Treaty of Waitangi claims is now law with the passing of the Treaty of Waitangi Amendment Act 2006 on 12 December 2006. The Act passed with a large majority, with only the Green Party and the Maori Party declining to support it.

In our last newsletter, we commented on the Maori Purposes Bill that was then before the House of Representatives, which proposed to introduce a deadline for the lodgement of historical Treaty of Waitangi claims. The Maori Purposes Bill was an omnibus piece of legislation, and was split into four separate Bills before its final reading. One of those Bills, the Treaty of Waitangi Amendment Bill (now enacted as the Treaty of Waitangi Amendment Act 2006) contains provisions amending the Treaty of Waitangi Act 1975, introducing a definition of "historical claim" and imposing a cut-off date for the lodging of those claims to the Waitangi Tribunal. All

historical claims (being those claims relating to events that occurred before 21 September 1992) must now be lodged with the Tribunal by 1 September 2008. The Act does not affect the ability of Maori to make claims relating to events after 1 September 1992, and it would be possible for a claim to be made to the Tribunal that the deadline itself is a Treaty breach.

The Act does not, however, state a deadline by which all Treaty claims must be settled, although the Government and the Office of Treaty Settlements say they are confident that all historical claims will be settled by 2020, with most claims being settled in clusters through the direct negotiation process.

### **Foreshore and Seabed Act (Repeal) Bill**

Tariana Turia's Foreshore and Seabed Act (Repeal) Bill was introduced into Parliament in October 2006, and is awaiting its first reading. There has been some confusion as to what effect the Bill will have if enacted as currently drafted.

Some MPs have commented that the Bill does not achieve what it is intended to achieve, because it continues to vest ownership of the foreshore and seabed in

# “Foreshore and Seabed Act (Repeal) Bill...it now seems unlikely that the Bill will proceed further than its first reading in Parliament.”

the Crown.

Part 1 of the Bill repeals the Foreshore and Seabed Act 2004.

Part 2 of the Bill is, in all material respects, the Foreshore and Seabed Endowment Revesting Act 1991 (the Endowment Revesting Act).

The Endowment Act was repealed by the Foreshore and Seabed Act 2004. Prior to its repeal, section 9A of the Endowment Revesting Act provided that:

- 1) All land that
  - a) Either
    - i) is foreshore and seabed within the coastal marine area (within the meaning of the Resource Management Act 1991); or
    - ii) was foreshore, seabed, or both, within the coastal marine area (within the meaning of that Act) on the 1st day of October 1991 and has been reclaimed (whether lawfully or otherwise) on or after that date; and
  - b) is for the time being vested in the Crown, but for the time being is not set aside for any public purpose or held by any person in fee simple,

shall be land of the Crown to which this section applies and shall be administered by the Minister; but the provisions of the Land Act 1948 shall not apply to such land.

Part 2 of Tariana Turia's Bill seeks to re-enact section 9A of the Endowment Revesting Act. Some commentators have questioned whether re-enacting section 9A would, in effect, confirm the Crown's ownership of the foreshore and seabed (rather than overturn it).

However, the courts have already determined that section 9A of the Endowment Revesting Act did not vest the foreshore and seabed in the Crown. In *Ngati Apa v Attorney-General* [2003] 3 NZLR 643, the original Court of Appeal decision that was the catalyst for the intense focus on the foreshore and seabed, the Court found that section 9A, was "not capable of being read as of itself effecting a vesting of land" and that it "applies only to land which is property of the Crown".

The Bill, if enacted, will therefore return the legal position to as it was prior to the enactment of the Foreshore and Seabed Act 2004. If the Bill is enacted, it would be open to the courts to establish who owns different parts of the foreshore and seabed.

However, it now seems unlikely that the Bill will proceed further than its first reading in Parliament, as National Party leader John Key announced earlier this month that National will not support the Bill proceeding to the Select Committee stage.

As an aside and as far as we are aware, in the period of over two years since the enactment of the Foreshore and Seabed Act 2004, there have not been any successful territorial customary rights findings, or customary rights orders granted by the courts under the Foreshore and Seabed Act.

We do note however, that three groups (Ngati Porou, Te Whanau a Apanui and Ngati Porou ki Hauraki) are currently in direct negotiations with the Government to resolve their claims to areas of the foreshore and seabed.

## Te Ohu Kaimoana appointments

Te Kawai Taumata, an electoral college formed to make appointments to the board of the Maori Fisheries Trust Te Ohu Kaimoana (Te Ohu), recently made its first appointments.

“The Treaty was first valued by British auction house Sotheby’s in 1999 for \$30 million.”



Rosalind Dawson Solicitor

Since the 1989 Fisheries Settlement with the Crown, all appointments to Te Ohu and to its predecessor, the Treaty of Waitangi Fisheries Commission, have been made by the Minister of Maori Affairs. Tukuroirangi Morgan, chair of Te Kawai Taumata said:

“This is an historical appointment and the first time that Maori themselves have decided who will represent their interests in the marine environment.”<sup>1</sup>

Te Kawai Taumata appointed Rikirangi Gage (chairman of Te Runanga o Te Whanau a Apanui) and Ngahiwi Tomoana (chairman of Ngati Kahungunu Iwi Incorporated) as directors from February 2007, for a two year term.

Two existing directors (Archie Taiaroa, the current deputy chairman of Te Ohu, and Koro Wetere), who have both served on the Te Ohu Board since it was formed in 2004, were reappointed for a four year term.

After a six year tenure, Labour MP Shane Jones stepped down as chair of Te Ohu at the Te Ohu annual general meeting held on 2 February 2007. Mr Jones has been under some political pressure to resign as chair since becoming an MP at the last election.

### Treaty of Waitangi valued

It has recently been reported that, according to the financial statements of the Government for 2005-2006, the Treaty of Waitangi has been valued at \$33 million. It may surprise some that a monetary value has been able to be placed on what is considered to be our country’s founding document, but an offer was in fact made to Government from an unnamed collector to purchase the Treaty for \$30 million in 2005. Needless to say, the Treaty was not sold.

The Treaty was first valued by British auction house Sotheby’s in 1999 for \$30 million. Since that time, its value has been indexed according to the consumer price index. Officials have assured the media that the

reason for valuing the Treaty is to comply with financial reporting standards, and it appears that any dollar value that is officially placed on the Treaty is merely notional.

### Māori miss out on extra electorate seat

Following an analysis of the 2006 Census results, Statistics New Zealand has announced that no new Maori seat will be created for the next election. This will be a disappointment to the people who had campaigned to sign more people on to the Maori roll in order to increase the number of Maori seats from 7 to 8. Maori seat numbers are based on Census results and on the numbers on the electoral roll.

However, the results do show that one new general electorate seat will need to be created in the North Island. The Representation Commission will determine the name and location of this seat. The addition of a general electorate seat means that the number of list seats will be reduced by one.

### Shared fisheries reform

Iwi have united in opposition to the Ministry of Fisheries’ (the Ministry) proposals to reform the management of shared fisheries.

The proposed reform is arguably the most significant policy development in the fisheries sector since the introduction of the Quota Management System and the settlement of Maori Treaty claims, and has the potential to devalue the Maori commercial fisheries settlement. Te Ohu has stated that if the proposals are instituted, the value of the fisheries assets awarded to Maori by the 1992 Treaty of Waitangi fisheries settlement could be reduced by 10%.<sup>2</sup>

The Ministry is currently reviewing the management of fisheries that are shared by commercial, customary and recreational fishers (such as snapper, kahawai and

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crayfish). The discussion document released by the Ministry asserts that a basic level of amateur catch should be guaranteed in each shared fishery. That level of catch would have priority over commercial fishing.

More than 60 representatives from iwi throughout the country expressed their disapproval of the Ministry's proposals at a hui hosted by Te Ohu on 9 February 2007, and iwi leaders have since met with members of Labour's Maori caucus, the National Party and the Maori Party to express their concerns over the proposal. Fisheries Minister Jim Anderton has stated that the Maori lobbying verged on "hysteria" and was not based on the facts of the proposals as outlined in the Ministry discussion documents.<sup>3</sup> However, iwi are concerned that the Ministry's proposals aim to transfer assets to the amateur fishing sector, without first analysing the existing take of that sector.<sup>4</sup>

Submissions are able to be made to the Ministry on this issue until 28 February 2007. It will be important for iwi to make their views known. The Government will decide on changes to the current management policy following this closing date. The Ministry's discussion document is available at: <http://www.fish.govt.nz/en-nz/Shared+Fisheries/default.htm>

Please contact us if you would like our help to prepare a submission on this issue.

### Charities Register open

The Charities Commission was established in 2005 by the Charities Act 2005 to register and monitor charitable organisations in New Zealand.

The Charities Commission began accepting applications for registration on the Charities

Register on 1 February 2007. Charitable organisations now have just under 18 months to register on the Charities Register.

The tax exemption status of charities that do not register on the Charities Register by 1 July 2008 will be affected, in that they will lose their tax exempt status.

More information, and the necessary forms for registering, can be found online at [www.charities.govt.nz](http://www.charities.govt.nz) or by calling 0508 242 748.

We can provide further advice about registering with the Charities Commission and assist with this process.

### Our Māori Services team

Our Maori Services team has been the leading specialist Maori law practice in the country and has advised iwi clients for more than 20 years.

Our areas of expertise include the Treaty of Waitangi, consultation and the emergent Maori economy. We act for Maori clients in the direct negotiation of settlement of Treaty claims against the Crown and the restructuring of asset and governance structures. We also advise non-Maori clients on complex Maori legal issues.

#### Footnotes

1. "New Appointments to the Board of Te Ohu Kaimoana", Press Release, Te Ohu Kaimoana, 17 January 2007, Scoop Independent News, [www.scoop.co.nz/stories/BU0701/S00123.htm](http://www.scoop.co.nz/stories/BU0701/S00123.htm).

2. "Fisheries fears heat up", Haydon Dewes, Dominion Post, 21/2/2007, p4.

3. "Fisheries fears heat up", Haydon Dewes, Dominion Post, 21/2/2007, p4.

4. "Proposal 'claws back' iwi fisheries", Martin Gibson, Gisborne Herald, 20/2/2007, p3.

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