

in brief from  
**RAINEY COLLINS**  
**LAWYERS**  
MAORI ISSUES

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## NAU MAI HAERE MAI

...to the Summer edition of Rainey Collins In Brief Maori Issues newsletter. In this edition we focus on:

- What to do after you've filed your Treaty claim
- Surviving the settlement process
- Recent negotiations
- Treaty settlements – what's in it for you
- An extension to New Zealand's seabed
- Whangai and succession – make a will to protect your child

I trust you find the information of interest and use.

Kia ora,

Peter Johnston



PETER JOHNSTON

## Current Inquiries

The Whanganui Tribunal is presently in weeks 10-13 of hearing evidence from claimants. The evidence for the Ngati Rangi claim will now be heard next year.

A judicial conference for the Te Papanahi o Te Raki District Inquiry ("Northland") was recently chaired by Judge Coxhead at Waitangi to gain feedback on advancing the inquiry.

Research is continuing in the Te Rohe Potae Inquiry District. Further judicial conferences will be convened by the Presiding Officer, Judge Ambler.

## I've Filed a Treaty Claim, What Next?

**In the months leading up to 1 September 2008, over 2,000 new Treaty claims were lodged with the Waitangi Tribunal. These are in addition to the 1500 that had been lodged over the previous 33 years since the Tribunal was created in 1975. Was yours one of the new ones?**

### 1. What If I Missed the Deadline?

If it is a contemporary claim – relating to Crown acts or omissions after 21 September 1992 – there is no problem as the deadline did not apply. For historical claims – relating to claims arising before 21 September 1992 – you may be able to join with an existing historical claim if they are prepared to amend their claim to include your issues.

### 2. What Happens to My Claim Now?

Claims that meet the basic criteria can be registered and given a Wai number. Those that don't will be contacted by Tribunal staff for additional detail. This sorting and registration of so many claims is likely to take months. Once a claim is registered, the Tribunal will join it with the other claims in the relevant inquiry district and you will be provided with all relevant information for that district.

### 3. Is Legal Aid Available?

Yes, legal aid is available for your claim. The legal aid process requires lawyers approved to practise in the Waitangi Tribunal field. Rainey Collins have a number of lawyers who are highly experienced in this field. An application for legal aid funding must then be made through your chosen lawyer to the Legal Services Agency ("LSA").

### 4. Is Funding Available for Research and Claim Administration?

Most funding is provided by the Crown Forestry Rental Trust ("CFRT"). However, CFRT assistance is only available in limited circumstances. These include being actively engaged with the Tribunal or Crown, and having a Crown licensed forest within your rohe. More information on the criteria for CFRT funding assistance can be found at <http://www.cfrt.org.nz>.

**For more information on the Waitangi Tribunal or settlement process, please refer to the Rainey Collins website [www.raineycollins.co.nz](http://www.raineycollins.co.nz)**



BRYAN GILLING

# Surviving the Settlement Process

Your group has decided to go into direct negotiations - now what? For many groups, direct negotiations can be a daunting prospect. Here are some tips to make sure you are prepared from the outset.

## 1. Understand the Stages of the Process

It is important to understand the key stages of the settlement process. The Crown can be flexible and negotiations can depart from the usual stages ... but here are some of them:

### *Mandating*

The process by which the mandate of the claimant group representatives is conferred by the claimant group and recognised by the Crown.

### *Terms of Negotiation*

The Terms of Negotiation, if required, set out the basis upon which negotiations will take place between the claimant group and the Crown.

### *Agreement-in-Principle*

This non-binding agreement can form the basis of further discussion with the claimant group and other overlapping groups.

### *Deed of Settlement*

This is the final Crown offer to the claimant group for the settlement of their historical grievances. Mandated representatives initial a Deed of Settlement to indicate to the wider claimant group that they believe the Crown's final offer should be accepted.

### *Ratification and Implementation*

If a sufficient majority of claimant group members ratify the initialled Deed of Settlement, the mandated representatives sign the Deed of Settlement. Once a new governance entity is ratified by the claimant group and established, the Crown introduces enacting legislation for the settlement.

## 2. Consider Your Options

The Crown over recent months has shown flexibility with the types of settlements it has been involved in, and examples of these are set out in the "recent negotiations" article on this page. It is important to clarify what your claimant group's goals are and the best way to achieve these goals.

## 3. The Right Representatives

It is important to identify representatives who can seek and carry the mandate for the claimant group. Is there an existing organisation which represents the claimant group, and has the flexibility to make decisions about the negotiations? Or will your group need to select new representatives? The Office of Treaty Settlements has requirements about whether it will recognise the mandate of an organisation or individuals to represent the claimant community.

## 4. Organisation

It is important to be organised from the outset. You will need a communications strategy to ensure that the claimant community is kept informed, and good administration support to cope with all the documentation required.

## 5. Key People

With the amount of organisation involved in a Treaty settlement, it is important to choose carefully who your key people will be - such as your negotiators and project manager.

At Rainey Collins, we can help you plan your negotiations ... and get you where you want to be.



CIARA LUI

# Recent Negotiations

Over past months, the Crown has shown flexibility in the type of settlements it has been involved in. Here are some examples ...

## Deed of Settlement for Contemporary Aspects of the Napier Hospital and Health Services Claim

The Deed of Settlement signed between the Crown and Napier iwi resolves aspects of the Hospital and Health Services claim relating to events after September 1992. The settlement provides Napier iwi with resources to provide targeted health services in the Maraenui area of Napier, and is worth \$2.7 million. This is the first health-related Treaty of Waitangi claim to reach a settlement.

## Waikato-Tainui Settle Waikato River Claim

The Waikato River Treaty settlement will see Tainui become a major player in the clean-up of the Waikato River. Tainui will receive \$100 million upon settlement.

Tainui will effectively receive a further \$200 million from the accumulated sum for a clean-up fund, which groups within Tainui must bid for over a 30-year period.

## \$97 Million Aquaculture Settlement

The Crown has reached an early agreement with South Island and Hauraki iwi to settle their claims to commercial aquaculture arising between 21 September 1992 and 31 December 2004. The agreement-in-principle provides for a one-off payment of \$97 million. In effect, the agreement brings forward by five years the delivery of a settlement reached in 2004 and implemented in the Maori Commercial Aquaculture Claims Settlement Act.

# Treaty Settlements ... So What's in It for You?

It is important to know at the outset of negotiations what redress is available.

Here are some of the types of redress...

## Financial and Commercial Redress

Financial and commercial redress is the part of the settlement which is primarily economic or commercial in nature, and is given a monetary value (called the redress quantum). The claimant may take the redress quantum in cash and/or use it to purchase Crown property in their claim area.

### Crown Exotic Forest Land

Crown exotic forest land is often seen as one of the most valuable types of Crown property included in a settlement, because of the value of the accumulated rentals that may be held by the Crown Forestry Rental Trust and the potential income from the land.

In a recent settlement with Central North Island (CNI) Iwi, the Government transferred \$195.7 million worth of Crown forest land to the CNI Iwi Collective. In addition, the Collective will receive the rentals that have accumulated on the land since 1989, which are worth approximately \$223 million, and an annual income stream of about \$13 million.

The use of Crown forest land in settlements reflects the arrangements between the Crown and Maori in the Crown Forest Assets Act 1989 (CFAA).

Under the CFAA, the Crown can transfer the trees and the right to use the land to cut them to third parties, who receive Crown forest licences. The Crown retains ownership of the land.

## Cultural Redress

Cultural redress is intended to recognise the traditional, historical, cultural and spiritual association of a claimant group with places and sites owned by the Crown within their area of interest.

Redress is often focused on achieving the following:

- ▶ Protecting wahi tapu and wahi whakahirahira.

- ▶ Providing opportunities for input into the management, control or ownership of Crown-owned sites, areas or customary resources with which the claimant group has traditional and cultural associations.

- ▶ Providing opportunities for developing future relationships with government agencies and departments, and other agencies such as local bodies.

- ▶ Providing visible recognition of the claimant group within their area of interest.

## Social and Cultural Revitalisation

Recently, the Crown and claimant groups have been entering into agreements to provide for the "cultural and/or social revitalisation of the claimant group". This type of redress provides directly for cultural development, and has included provision for:

- ▶ Gifting of papakainga properties (Ngati Apa);
- ▶ Funding toward cultural redevelopment and revitalisation plans (Ngati Apa, Turanganui-a-Kiwa);
- ▶ Funding to assist with social revitalisation in the areas of marae redevelopment and housing support (Ngati Kahurangi); and
- ▶ Funding for compilation of comprehensive historical records (Ngati Apa).

## Quantum

The value of redress provided as "cultural redress" does not form part of the redress quantum. Given this, cultural redress is an important means of adding value to a settlement and should be taken into account when considering the overall value of a settlement to a claimant group.



JO-ELLA SARICH

# UN Recognises an Extension to New Zealand's Seabed

On 22 September 2008 the United Nations recognised New Zealand's claim to its continental shelf. The area consists of 1.7 million square kilometres of seabed. This area is outside of New Zealand's existing 200 nautical mile (370.4 kilometres) Exclusive Economic Zone ("EEZ").

A 21-member commission was established under the Law of the Sea Convention to consider submissions and make recommendations on the outer limits of the continental shelf beyond an EEZ. New Zealand can now exercise rights to resources such as petroleum and other minerals in its continental shelf.

The seas above the continental shelf are, however, international waters. This means that New Zealand has no special rights to fisheries within its continental shelf area.

A boundary is being negotiated.



CAMPBELL DUNCAN

# Whangai and Succession – Make a Will to Protect Your Child

Mereana (not her real name), a whangai, recently tried to succeed to the estate of her whangai father, Hone (not his real name). Hone's estate consisted of interests in Maori freehold land, the whanau home situated on general land, and other personal property. Unfortunately, Hone did not have a will. Because of this, Mereana was left in the sad position of being unable to make a claim to any part of Hone's estate, except for his interests in Maori freehold land. This situation could have been avoided had Hone made a will clearly setting out what parts of his estate he wished Mereana to succeed to after his death.

## At law whangai can only succeed:

- To beneficial interests in Maori freehold land by an order of the Maori Land Court where the whangai parent left no will; and
- To other aspects of a whangai parent's estate under the will of the whangai parent.

## Maori Freehold Land

Where a whangai parent does not leave a will, the Maori Land Court will decide whether a whangai should succeed to their interests in Maori freehold land. The Maori Land Court will make this decision according to tikanga and will usually need evidence from experts in the tikanga of the hapu or iwi in question.

Any court process can take time, and it can be an uncertain period for a whangai waiting for such a decision from the Maori Land Court. The parent of a whangai child can help to avoid this situation by making a will setting out their wishes.

## Other Parts of Estate

If a parent wishes their whangai to succeed to other parts of their estate (other than Maori freehold land), then they must make a will clearly setting out their wishes. Where a whangai parent dies intestate, a whangai cannot succeed to other aspects of their whangai parent's estate.

In a recent case the Court of Appeal found that a whangai is not a child within the meaning of section 3 of the Family Protection Act, and therefore cannot make any claim under that Act to succeed to an estate in the case of intestacy.

The Court went on to make it clear that if whangai were to be included in the definition under section 3 of the Act, then Parliament would have to amend the legislation.

## Protecting your whangai child

This legal situation highlights the need for parents of whangai to clearly set out in a will those parts of their estate they wish their whangai child to share in.

Making a will is often not a difficult process, but nevertheless is a very important one. If you don't have a will, now is the time to remedy that. If you do have a will, check to make sure it reflects your current wishes and, if not, make those changes now.

Making a will has strict legal formalities which if not followed make the will invalid. We can assist you to put your wishes into a valid will.



Charlotte Castle

**For more information on Treaty claims, the Treaty settlement process, and Maori land matters, please check out our recent articles and news on the Rainey Collins website [www.raineycollins.co.nz](http://www.raineycollins.co.nz) or contact Dr Bryan Gilling on 04-473-6850 or email [bgilling@raineycollins.co.nz](mailto:bgilling@raineycollins.co.nz)**

## RAINEY COLLINS LAWYERS

Tel (04) 473 6850

Fax (04) 473 9304

DX SP20010

[www.raineycollins.co.nz](http://www.raineycollins.co.nz)

Level 23 Vodafone on the Quay

157 Lambton Quay

PO Box 689

Wellington 6140

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