

**Te Hunga Roia Maori o Aotearoa
(Maori Law Society Inc.)**



SUBMISSION: MAORI PURPOSES BILL

15 AUGUST 2006

Te Hunga Roia Maori o Aotearoa, Submission regarding Maori Purposes Bill

1 Te Hunga Roia Maori o Aotearoa

- 1.1 This submission is made for and on behalf of Te Hunga Roia Maori o Aotearoa (THRMOA).
- 1.2 The THRMOA has a membership totalling more than 350 members of Maori lawyers. In addition to these members THRMOA also incorporates students who are studying towards a Bachelor of Laws (LLB).
- 1.3 THRMOA ensures the effective networking of members, holds a mandate to make submissions on a range of policies and proposed legislation, ensures representation of its membership on selected committees and organises regular national hui which provides an annual opportunity for Maori lawyers to discuss and debate issues relevant to Maori.

2 Maori Purposes Bill

- 2.1 The Maori Purposes Bill is an omnibus piece of legislation which amends 4 statutes
 - a. Te Ture Whenua Maori Act 1993;
 - b. Treaty of Waitangi Act 1975
 - c. Maori Fisheries Act 2004
 - d. Maori Commercial Aquaculture Claims Settlement Act 2004
- 2.2 THRMOA **supports** some aspects of the bill and **strongly opposes** other aspects
- 2.3 We wish to have an opportunity to speak to the Committee

3 Amendments to Te Ture Whenua Maori Act 1993

- 3.1 *Clause 4: Appointment of Judges:* Section 7(2) is amended by omitting “8” and substituting “14.”
 - a. THRMOA **supports** this change
 - b. THRMOA would seek to include a timeframe for the appointment of the further 6 Judges. THRMOA submits that there is an immediate need for the extra Judges.
- 3.2 *Clause 5, Clause 10 and Clause 12: Delegation to Deputy Chief Judge:* Amendment to Section 8A

- a. THRMOA **supports** this change on the basis of the delegation being conferred on a formal basis as set out in sub-clause (3)
- 3.3 *Clauses 6-9: Procedure of Court when making determinations (under the Maori Fisheries Act 2004)*
- a. THRMOA has **no position** in respect to these changes
- 3.4 *Clause 13:: Validation of actions prior to the commencement of the bill by the Deputy Chief Judge and Judge Norman F Smith (acting outside his warrant)*
- a. THRMOA **does not support** generally the notion of retrospective legislation.
 - b. THRMOA does not have the appropriate information to determine what decisions would be affected by this amendment and whether the persons, hapu or iwi affected by the decisions were dealt with appropriately by the Court.

4 Amendments to Treaty of Waitangi Act 1975

- 4.1 *Clause 17 and Clause 18: Limits on the jurisdiction of the Waitangi Tribunal to inquire into historical claims submitted after 1 September 2008.*
- a. THRMOA **strongly opposes** the arbitrary imposition of a final filing date for claims in respect of historical breaches (breaches of the Treaty of Waitangi occurring prior to 21 September 1992).
 - b. There are a number of Inquiry districts who have now had their historical claims fully inquired into and who will not be affected by the changes. There are other districts which are in varying states of inquiry and who may be severely prejudiced in terms of their ability to make claims due to this arbitrarily imposed date.
 - c. Due to the historical nature of the pre 1992 Treaty breaches many Maori are unaware of how those Treaty breaches have affected them until historical researchers have had the opportunity to research the area, Native Land Court records and provide answers. Many Maori are in the position whereby they are landless but they do not know why or how.
 - d. If an area has not been opened up to Inquiry or if significant research has not been initiated in an Inquiry District prior to 1 September 2008, the Maori in those areas of Inquiry will be significantly prejudiced in their ability to fully understand and lodge their historical claims.
 - e. As each area opens up to inquiry it is common that there will be an influx of claims based upon the research. These may come from hapu or iwi who had gone into seeming extinction, often because of landlessness, and accordingly the situation emerges that those who are affected most harshly by Crown Treaty breaches are unable to pursue their claims due to an arbitrary date being imposed.

- f. A further situation may also emerge whereby existing hapu and iwi become aware of breaches occurred which had affected them that they were not aware of. If they did not have their claims in prior to 1 September 2008, they will not be able to make claims in respect of those breaches.
- g. Some of the Inquiry districts will be affected more than others. On a very approximate basis, THRMOA has ascertained that the following districts are likely to be affected, this is not intended to be an exhaustive list and is provided without significant research undertaken;
 - i. *Severely Prejudiced; Inquiry not started; Research not started*
 - A. Taihape District
 - B. Hawkes Bay District
 - C. Wellington Coast and Horowhenua
 - D. Rangitikei Manawatu District
 - E. North East Bay of Plenty District
 - F. Waikato Raukawa
 - G. King Country
 - ii. *Prejudiced; Research commenced but incomplete*
 - A. Wairoa District
 - B. East Coast District
 - C. Northland District
 - iii. *Inquiries Part Heard; Not all historical breaches dealt with*
 - A. Central North Island
 - B. Taranaki
 - C. Te Roroa
 - D. Waikato-Tainui
- h. The nature of dealing with historical breaches district by district and then closing that district off means that there *is* certainty as to the finalisation of historical breach inquiry. This certainty is reliant upon the Government providing the necessary funding to have each district inquired into. The imposition of a final date will simply prejudice those areas where the Government has not injected the necessary funds to ensure that the process is full, fair and final. It is submitted that this is grossly unfair.
- i. It is therefore submitted that the imposition of this date for the final filing of all historical claims **should be removed** and that should the Government wish to

speed up the process of hearing historical treaty breaches, further funding should be made available to initiate inquiries into those areas as set out above.

5 Amendments to Maori Fisheries Act 2004

5.1 *Clause 22: Adjustment of quota shares*

- a. THRMOA are concerned that this provision may affect the settlement assets held by Maori and **does not support** this change should it have the effect of altering the terms of the Fisheries Settlements of 1989 and 1992.

6 Summary

6.1 Te Ture Whenua Maori Act 1993

- a. THRMOA supports the addition of 6 Judges to the Maori Land Court
- b. THRMOA supports the delegation of certain powers to the Deputy Chief Judge, upon the formal terms as set out.
- c. THRMOA does not have adequate information to submit as to the appropriateness of the retrospective validation of powers exercised by the Deputy Chief Judge or Judge Norman F Smith (acting outside his warrant).

6.2 Treaty of Waitangi Act 1975

- a. THRMOA strongly oppose the imposition of a final filing date for Historical Breaches (as defined by the Treaty of Waitangi Act 1975).

6.3 Maori Fisheries Act 2004

- a. THRMOA does not support the adjustment of quota shares to the extent that the adjustment may affect the Fisheries Settlements of 1989 and 1992.