

BEFORE THE WAITANGI TRIBUNAL

IN THE MATTER of the Treaty
of Waitangi Act
1975 (as amended)

A N D

RECEIVED
Waitangi Tribunal Dept
10 AUG 1993
Dept. of Justice
WELLINGTON

IN THE MATTER of claims to the
Waitangi Tribunal by
the **MAORI WOMEN'S
WELFARE LEAGUE
INCORPORATED** AND by
Others

MEMORANDUM TO WAITANGI TRIBUNAL

1. **Introduction**

1.1 The claimants have refined the particulars of their urgent claim and provide the Tribunal with further details on the issue of urgency.

2. **Issues to be Raised at Urgent Hearing**

2.1 The claimants understand there are a number of requests for urgent hearings from the Tribunal. The claimants are mindful of these demands and the strains on Tribunal resources. The issues which the claimants wish the Tribunal to deal with at an urgent hearing have been refined and can now be stated as follows:

- (a) Does the Treaty of Waitangi ("the Treaty") guarantee to Maori women rangatiratanga?
- (b) Does the rangatiratanga guaranteed by the Treaty include the exercise of political, economic and social power by Maori women? If so, does the Treaty encompass a development right in this context?
- (c) Are the processes for appointments that are being made by the Crown to organisations in accordance with the guarantees in the Treaty?

3. **Pending Appointments**

3.1 The claimants contend that they are prejudiced by the non-appointment of Maori women to bodies that administer, develop policy and foster the political, economic and social objectives of Maori. It is claimed, that the appointment procedures

instituted by the Crown are not in accordance with the Treaty.

3.2 There are four key political, economic and social bodies that are about to be formed or appointments made to them, they are:

(a) The Maori Education Foundation Trust Board;

(b) The Fishing Industry Board;

(c) Te Waka Toi; and

(d) Te Reo Whakapuaki Irirangi.

4. Maori Education Foundation (Abolition) Act 1993

4.1 This Act received Royal Assent on 25 June 1993. It is attached as Appendix 1. It comes into effect when the Governor-General makes any Order in Council that recognises a Charitable Trust as a successor to the Maori Education Foundation ("MEF"). Upon the making of this Order in Council the former MEF ceases to exist and the recognised Charitable Trust assumes the assets and liabilities of the former MEF. To the best of the claimants' knowledge the Governor-General has not made any such Order in Council.

5. The legislative history of the Maori Education Foundation (Abolition) Act

5.1 The Education Reform Bill (No.2) was introduced into the House of Representatives on 8 December 1992. It was referred to the Education and Science Select Committee on 1 April 1993. The Select Committee reported back to the House on 3 June 1993, the Bill received a second reading on 8 June 1993. The Education Reform Bill (No.2) did not include any clauses that affected the Maori Education Foundation.

- 5.2 On 15 June 1993 the Government moved to introduce a supplementary order paper which included the Maori Education Foundation (Abolition) Bill. This Bill was not referred to a Select Committee. The Maori Education Foundation (Abolition) Bill went through all of its stages on 22 June 1993.
- 5.3 There was, therefore, no opportunity for the Maori Affairs' Select Committee to make comment on or receive submissions from the public on the abolition of the MEF.

6. **The Maori Women's Welfare League's Role in the Maori Education Foundation**

- 6.1 When the Maori Education Foundation Bill was being debated in 1961 the MP for Waikato noted the League's fundamental role in Maori education when he said:

"... one of the trustees is to be appointed on the nomination of the Dominion Executive of the Maori Women's Welfare League Incorporated. These women who have already left their mark on New Zealand, move among all sections of our Maori people, whether their contacts be in the city or in the most remote parts of our rural areas. They are women who are leaders among their people. When it comes to the field of education, I think it is fair to say that it is the women who take the greatest interest, and not the menfolk... . These Maori women play a very important part in helping Maori mothers in guiding the future of their children." (pp 1996-1197 Hansard Volume 327 2 August - 5 September 1961)

- 6.2 Nganeko Minhinnick has filed a statement which outlines the major role that the League played in supporting and fundraising for the MEF.

7. The Prejudice

7.1 The replacement for the MEF is to be a Charitable Trust Board under Part II of the Charitable Trusts Act 1957 (s.3(1)(a) Maori Education Foundation (Abolition) Act). The Maori Education Foundation Act 1961 provided in s.8(1)(e)(ii) that the Maori Women's Welfare League to appoint one of the trustees to the Maori Education Foundation. The Maori Women's Welfare League (or any other Maori organisation) does not have a statutory right to appoint any person to the new Board.

8. Fishing Industry Board

8.1 The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 provides in s.42 that there shall be two additional members appointed to the New Zealand Fishing Industry Board ("the FIB"). These additional members shall be appointed by the Minister of Fisheries acting on the nomination of the Treaty of Waitangi Fisheries Commission.

8.2 Further, the FIB appoints committees to advise it on various matters relating to the functions of the FIB. The FIB itself appoints persons to these committees. Members of such committees do not necessarily have to be members of the FIB.

8.3 By Section 9 (4) of the Act:

"(4) Every committee appointed under this section shall include a person nominated by the Treaty of Waitangi Fisheries Commission, unless the Commission has declined to appoint a person to be a member of that committee."

8.4 Pursuant to these sections of the Act there is provision for the appointment of a member "who is not a member of the Board", such appointment to a committee of the Board to be made by the Board acting

on the nomination of the Treaty of Waitangi Fisheries Commission.

8.5 The functions of the FIB are set out in s.10 of the Fishing Industry Board Act 1963 and are attached as Appendix 2 to this memorandum.

8.6 To the best of the claimants knowledge the Minister of Fisheries has not yet exercised his power of appointment to the FIB.

9. **The Prejudice**

9.1 One of the claimants to this claim was on the appointments list of the Minister of Fisheries to the Treaty of Waitangi Fisheries Commission. She was removed from that list within a matter of hours before the announcement of the Commissioners. She was an iwi nominee.

9.2 By this action of the Minister of Fisheries, the claimants have little confidence that the nomination processes of the Treaty of Waitangi Fisheries Commission (which are unknown to the claimants) and the appointment processes of the Minister will provide for the recognition of Maori women as representatives of Maori within the fishing industry.

10. **Te Waka Toi**

10.1 The Arts Council of New Zealand Bill was introduced to the House of Representatives on 25 June 1993. It reconstitutes the Arts Council of New Zealand. There will be two subsidiary boards to the Arts Council; one being the Maori Arts Board, called Te Waka Toi, and the other called the Arts Board.

10.2 Te Waka Toi will have seven members appointed by the Minister of Cultural Affairs in consultation with the Minister of Maori Affairs.

10.3 The present Arts Council has a sub-committee called Te Waka Toi which deals with Maori and South Pacific arts grants. There are nine members of this body; two of which are Maori women. The appointments were also made by the Minister of Culture in consultation with the Minister of Maori Affairs.

10.4 The Maori Women's Welfare League has always accorded a priority to the encouragement of Maori arts and crafts. The League has always recognised that it is very important for these aspects of Maori culture to be fostered and promoted. The League is concerned to ensure that Maori women are represented in an appropriate manner on the new Te Waka Toi.

11. Te Reo Whakapuaki Irirangi

11.1 A statement by Ripeka Evans has been filed with the Tribunal in respect to the pending appointments to Te Reo Whakapuaki Irirangi. Maori women and the League have been instrumental in the practical aspects of keeping the Maori language alive. The Kohanga Reo movement is an example.

11.2 As Ripeka Evans' statement notes, the Minister of Broadcasting has indicated that he will receive and give priority to nominations from only four Maori bodies being the Maori Language Commission, National Maori Congress, New Zealand Maori Council and Maori Radio Interests. None of these organisations specifically address the needs of Maori women or include the Maori Women's Welfare League.

12. The Prejudice

12.1 Te Reo Whakapuaki Irirangi will be developing and implementing policies in order to meet its primary object, that is, to promote the Maori language and culture by the provision of funds for the production and broadcasting of programmes.

12.2 The input of Maori women will be vital if a significant part of the Maori community are not to be marginalised or alienated from the services Te Reo Whakapuaki Irirangi will provide.

13. **Urgency**

13.1 The assistance of the Waitangi Tribunal is required to advise Government of the appropriate processes which should be employed when it makes these appointments. Without the benefit of the Tribunal's findings and recommendations further prejudice will occur.

13.2 The national nature of the issues to be raised in an urgent hearing (if granted) will have a wider context than the appointments to the four bodies referred to in this memorandum. The claimants understand that various appointments in the Health portfolio will soon come up for renewal and that other commissions and advisory groups in health may be formed or arise from the Health reforms now being undertaken. The Maori Women's Welfare League and the kindred and preceding organisation the Health League have played a critical, widespread and long-standing role in Maori health development and yet by omission the Crown has failed to accord Maori women priority in the restructured health system.

14. **Substantive Issues**

14.1 There are many substantive issues raised in the particulars of urgent claim already filed and it is envisaged that more will be raised as the research progresses. Particulars of these substantive issues will be supplied to the Tribunal in due course.

15. **Relief**

15.1 The relief sought by the claimants at an urgent hearing is the same relief as set out in the Urgent Particulars of Claim.

16. **Summary**

- 16.1 The application for urgency is still extant. The issues to be canvassed at an urgent hearing (if granted) have been refined and more tightly focused on pending Crown action that will prejudice the claimants.
- 16.2 The claimants envisage that the hearing would occupy five hearing days. The claimants request that the hearing take place on a marae in Northland such as Waitangi or Otiria. Counsel would propose calling Dame Whina Cooper to give evidence, the health of Dame Whina is of such a fragile nature that long distance travel will add further stress to her.
- 16.3 Preliminary research will be available to be filed by 22 October 1993 and the claimants ready to proceed by mid November 1993.
- 16.4 If the Tribunal requires any additional information any one of the following counsel for the claimants may be contacted:

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Dated at Auckland this ^{9th} day of August 1993


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Denese L Henare

1993

Maori Education Foundation
(Abolition)

No. 53



ANALYSIS

Title	4. Assets and liabilities of Foundation to become assets and liabilities of trust board
1. Short Title	5. Abolition of Foundation
2. Interpretation	6. Gifts to successor board
3. Recognition of successor to Foundation	7. Repeals

1993, No. 53

An Act to provide for the abolition of the Maori Education Foundation, and the recognition of trustees incorporated as a Board under Part II of the Charitable Trusts Act 1957 to continue its functions

[25 June 1993]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Maori Education Foundation (Abolition) Act 1993.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Appointed day” means the day appointed by the order made under section 3 (1) of this Act;

“Foundation” means the body corporate constituted by section 4 (1) of the Foundation Act;

“The Foundation Act” means the Maori Education Foundation Act 1961;

“Successor board” means the trust board recognised by the order made under section 3 (1) of this Act.

3. Recognition of successor to Foundation—(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Education,—

(a) Recognise as the successor to the Foundation any trustees incorporated as a Board under Part II of the Charitable Trusts Act 1957; and

(b) Appoint a day for the purposes of sections 4 to 7 of this Act.

(2) The Minister of Education shall not recommend the making of an order under subsection (1) of this section unless satisfied that the successor board's general purpose is, or includes,—

- (a) Promoting and encouraging the better education of Maori; and
- (b) Providing financial assistance for that purpose.

Cf. 1961, No. 46, s. 5

4. Assets and liabilities of Foundation to become assets and liabilities of trust board—(1) On the appointed day, the assets and liabilities that the Foundation had immediately before that day shall become assets and liabilities of the successor board.

(2) The successor board shall hold in trust for the purposes of the successor board all property that, immediately before becoming an asset of the successor board under subsection (1) of this section, the Foundation held in trust for the purposes of the Foundation.

(3) Subject to subsection (2) of this section, all property that, immediately before becoming an asset of the successor board under subsection (1) of this section, was held by the Foundation in trust for any purpose shall be held by the successor board in trust for the same purpose.

5. Abolition of Foundation—(1) The Foundation is hereby abolished with effect on the appointed day.

(2) The Board of the Foundation, constituted by section 8 (1) of the Foundation Act, is hereby consequentially abolished, with effect on the appointed day.

(3) Both—

- (a) The executive committee (if any) of the Foundation; and
- (b) Every special committee of the Foundation,—

established under section 12 (1) of the Foundation Act, are hereby consequentially abolished, with effect on the appointed day.

(4) On and after the appointed day, every reference in any enactment other than this Act to the Foundation shall be read as a reference to the successor board; and, with any necessary modifications, that enactment shall have effect accordingly.

6. Gifts to successor board—(1) Notwithstanding anything to the contrary in Te Ture Whenua Maori Act 1993 or any

other enactment, on or after the appointed day, any Maori (within the meaning of section 4 of that Act) may—

- (a) Give to the successor board any Maori freehold land (within the meaning of section 4 of that Act), or any interest (including an equitable interest) in any such land; or
- (b) Otherwise dispose of any such land or interest in land to the successor board.

(2) Section 164 of Te Ture Whenua Maori Act 1993 shall, with any necessary modifications, apply to every gift and disposition under subsection (1) of this section.

(3) Unless expressly prohibited by any enactment or instrument of trust from doing so, any person or body, whether incorporated or unincorporated, including a Maori incorporation (within the meaning of section 4 of Te Ture Whenua Maori Act 1993), may make donations or gifts of money to the successor board.

Cf. 1961, No. 46, ss. 16, 20 (4)

7. Repeals—The following enactments are hereby repealed, with effect on the appointed day:

- (a) The Maori Education Foundation Act 1961;
- (b) The Maori Education Foundation Amendment Act 1962;
- (c) The Maori Education Foundation Amendment Act 1963;
- (d) The Maori Education Foundation Amendment Act 1965;
- (e) The Maori Education Foundation Amendment Act 1970;
- (f) The Maori Education Foundation Amendment Act 1975;
- (g) The Maori Education Foundation Amendment Act 1977;
- (h) The Maori Education Foundation Amendment Act 1992.

This Act is administered in the Ministry of Education

Section 10. Functions of Board (1) The functions of the Board shall be -

- (a) To promote the fishing industry in New Zealand:
- (b) To promote means of expanding the fishing industry in the interests of New Zealand and to ensure that full use is made of the fish resources of New Zealand:
- (c) To promote the sale of fish and fish products for consumption in New Zealand:
- (d) To ensure that an adequate supply of fish and fish products is made available at all times to the public throughout New Zealand at reasonable prices, having due regard to the desirability of ensuring a continuity of supplies for the export market.
- (e) To promote the export of fish and fish products, while ensuring that an adequate supply of fish and fish products is made available at all times to the public throughout New Zealand at reasonable prices:
- (f) To promote, both alone and in collaboration with other agencies, means of ensuring that proper standards are maintained with respect to fish and fish products intended for consumption in New Zealand or for export, both as to the quality thereof and as to the use of hygienic methods in the handling, processing, storage, packaging, and transport thereof and, where appropriate, to establish the form, size, and use of quality marks relating to these standards in accordance with regulations under this Act:
- (fa) To co-ordinate the domestic and export marking of fish and fish products:
- (fb) To license exporters of fish and fish products in accordance with regulations under this Act:
- (g) To resolve problems relating to the economic production of fish and fish products:
- (h) To promote a greater degree of co-ordination within the fishing industry:
- (i) To direct the attention of the Minister and of persons engaged in the fishing industry and of organisations of such persons to aspects of the fishing industry in which progress is most needed and most practicable:
- (j) To co-operate with any organisation established by the Government for the purposes of carrying out fisheries research:
- (k) To promote means of obtaining finance for the development of the fishing industry, and for that purpose to make recommendations to Government Departments and to lending organisations with respect to loan proposals:
- (ka) To provide or arrange the provision of such services (if any) as it considers appropriate to enable orderly trading in individual transferable quotas [[and trading in individual transferable quotas]] and interests in individual transferable quotas [[and transferable term quotas]] as provided for in Part IIA of the Fisheries Act 1983:]

- (1) To exercise and perform such other functions and powers in relation to the fishing industry as are conferred on the Board by this Act or by regulations under this Act.
- (2) It shall also be a function of the Board to report to the Minister from time to time concerning-
 - (a) Trends and prospects in overseas markets in respect of fish and fish products:
 - (b) Movements in costs or prices, or other factors likely to prejudice the economic stability of the fishing industry.

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IN THE MATTER of the Treaty
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1975 (as amended)

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IN THE MATTER of claims to the
Waitangi Tribunal by the **MAORI
WOMEN'S WELFARE LEAGUE INCORPORATED**
AND by Others

MEMORANDUM TO WAITANGI TRIBUNAL

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