

# TRANSCRIPTS OF PARLIAMENTARY DEBATES OF SIGNIFICANCE TO THE WAITANGI TRIBUNAL

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Treaty of Waitangi (State Enterprises) Bill (Introduction and First Reading)

**TREATY OF WAITANGI (STATE ENTERPRISES) BILL**

**Introduction**

Rt. Hon. GEOFFREY PALMER (Minister of Justice): I move, That the Treaty of Waitangi (State Enterprises) Bill be introduced. The introduction of the Bill is of major importance. The events leading up to the Bill, the way in which it has been negotiated, its substance and its practical implications, are matters of considerable historical significance in the life of the nation. The House should recall the developments that have preceded the Bill's introduction. On 18 December 1986 the State-Owned Enterprises Act generally came into force. The object of the Act was to provide for the successful commercial operation of certain of the Government's business activities. I draw members' attention to section 9 of the State-Owned Enterprises Act, which provides: ``Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.'' The Government's decision to incorporate that section in the State-Owned Enterprises Act was not taken lightly, nor was it taken without some awareness that it could have some significant consequences. Our resolve concerning section 9 has not weakened despite the testing time we have endured on that issue.

The State-owned enterprises policy involves the transfer of vast areas of land from the Crown to the new corporations. The Government was aware that some of those lands were the subject of claims before the Waitangi Tribunal. Accordingly, section 27 of the State-Owned Enterprises Act provided that those lands should continue to be subject to claims. Section 27 also provided that no certificate of title should be issued to State-owned enterprises in respect of those lands. It prohibited State-owned enterprises from transferring the lands, or any interest in them, to anyone other than the Crown. The Act provided further that if a claim to the Waitangi Tribunal was successful the Crown retained the power to reacquire from State-owned enterprises any lands necessary to settle the claim. It is not my intention here to rehearse the adequacies or otherwise of those provisions. Suffice it to say that the New Zealand Maori Council, on behalf of tribes, sought a court ruling on its contention that section 27 was insufficient protection of the rights guaranteed under section 9 for those who had brought no claims before the passage of the State-Owned Enterprises Act.

The unanimous judgment of the Court of Appeal was delivered on 29 June. A court of five judges held that the transfer of assets to State enterprises, without establishing any system to consider whether the transfer of particular assets or categories of assets would be inconsistent with the principles of the Treaty of Waitangi, would be unlawful. The court directed the Crown to prepare a scheme of safeguards protecting existing or foreseeable claims against lands and waters intended to be transferred to State-owned enterprises. The scheme was to be submitted to the New Zealand Maori Council for agreement. I am pleased to see its representatives in the galleries of the House tonight.

The Court of Appeal was unequivocal in stating its view that: ``The principles of the treaty do not authorise unreasonable restrictions on the right of a duly elected Government to follow its chosen policy. Indeed'', Sir Robin Cooke, the President of the Court of Appeal, said: ``to try to shackle the Government unreasonably would itself be inconsistent'' with the principles of the treaty. As I said at the time, the court's judgment was a landmark in New Zealand legal history. It represented a significant step towards a

genuine constitutional maturity of our own in New Zealand.

The task of achieving agreement between the Government and the New Zealand Maori Council has not been an easy one. The Government for its part was determined, if at all possible, to resolve those matters in a spirit of co-operation. In the event it has turned out to be a working example of the Government's commitment to the concept of partnership as set out in the Treaty of Waitangi. For their part, the New Zealand Maori Council and the iwis represented by them are to be congratulated on the way in which they reciprocated that commitment. The Bill before the House is testimony to what can be achieved by both parties when issues of difference can be approached in a conciliatory rather than in a confrontational manner.

The Bill gives effect to an agreement reached between the New Zealand Maori Council and the Crown in settlement of the Court of Appeal case. The Bill makes several amendments to the Treaty of Waitangi Act 1975, the State-Owned Enterprises Act 1986, as well as the Legal Aid Act 1969. The principal effect of the amendments is to provide a system to protect existing and likely future claims before the Waitangi Tribunal relating to Crown land. In particular, the Bill provides that following a recommendation of the Waitangi Tribunal the Crown can resume ownership of Crown land that has been transferred to a State-owned enterprise under section 23 and section 28 of the State-Owned Enterprises Act 1986. No claims to State-owned enterprise land made in the tribunal would be excluded from that provision. It applies to all claims whether or not they have yet been made.

The Bill would not mean that State-owned enterprises must hold on to land until all claims have been heard and resolved. Under the Bill the Crown could reacquire Crown lands sold to the State-owned enterprises and subsequently on-sold by the State-owned enterprise. That is a far-reaching provision and one that has not been embarked upon lightly. Further, the Government proposes that if the Waitangi Tribunal recommends the return of specific land to Maori ownership the Crown will be required by law to reacquire that land to give effect to the tribunal's recommendation. That is a major change to the status of the tribunal. The power of resumption would apply only to land being transferred under the State-Owned Enterprises Act. Land already alienated under deferred payment licence and leases containing a right of freeholding are excluded.

I should draw to the attention of the House the protection for persons dealing with land subject to resumption. Clause 10 inserts a proposed new section 27A in the State-Owned Enterprises Act. It provides that every title in respect of lands transferred from the Crown to State-owned enterprises will be endorsed. The endorsement will clearly designate the land as liable to resumption by the Crown in the event that the Waitangi Tribunal recommends to that effect. The endorsement is intended to ensure that all owners of the land, whether a State-owned enterprise or a subsequent purchaser, will be in no doubt about the status of the land.

The endorsement can be removed from the title in four ways: first, if, after hearing a claim, the Waitangi Tribunal concludes that the return of the land is not necessary to satisfy the settlement of the claim; second, if, after hearing the claim, the tribunal decides that it is not well founded; third, if the tribunal is satisfied that there are no claims to the land; and, fourth, if the parties to the claim consent to its removal.

The Bill also provides that when the tribunal upholds a claim related to Crown land that has been transferred to a State-owned enterprise, and recommends that the land should be returned to the claimant, the tribunal's recommendation will be an interim one. During the interim period of 90 days the Crown and the claimants can negotiate a mutually satisfactory alternative final settlement. If

the parties are unable to agree to an alternative settlement, or are satisfied with the interim recommendations of the tribunal, the interim recommendations become final and binding upon the Crown on the expiration of 90 days. When the tribunal makes a final recommendation for the return of lands, that land shall be resumed by the Crown in accordance with the relevant provisions of the Public Works Act 1981. That will ensure the minimum disruption possible. Affected parties will receive full compensation under the Public Works Act.

The Government wants to preserve the concept that grievances under the treaty are dealt with by the parties to the treaty---namely, the Crown and the Maori tribes. They are not subject to the interposition of third-party interests. Accordingly, for claims against Crown land transferred to the State-owned enterprises, only the treaty partners will have the right of hearing before the tribunal.

The Bill also deals with several subsidiary but complementary matters. First, it deals with wahi tapu, areas of particular cultural and spiritual significance to the Maori people. The Government proposes to introduce special measures to ensure that those areas are given the fullest possible protection. Wahi tapu identified before the transfer to State-owned enterprises will, when necessary, be excluded from transfer to State-owned enterprises. The Bill provides that the Crown can resume from State-owned enterprises wahi tapu that cannot be acceptably identified before transfer. The compulsory reacquisition provisions will be applicable to wahi tapu on land on-sold by State-owned enterprises before identification and resumption.

Second, the Bill deals with legal aid for claimants before the Waitangi Tribunal. It provides that legal aid is to be available to claimants before the tribunal. The Legal Aid Act 1969 has been amended to allow for tribal groups to apply collectively for legal aid. Those amendments are interim measures pending a detailed review of legal aid that is to be contained in the legal services measure to be introduced next year. Third, the Bill contains provisions dealing with the operation of the tribunal itself. The Government has taken several steps in recent weeks to improve the administration and resourcing of the tribunal. I consider that that is essential if the tribunal is to maintain the quality of its work in the face of the increased burden that other requirements of the Bill impose. The Bill gives the tribunal the power to commission research relating to claims. Alternatively, the tribunal is empowered to authorise a claimant to commission research relating to claims, and the tribunal will meet the costs of that research.

The Bill also allows an administrative director of the tribunal to be appointed, and enables claims to be referred to a mediator of the tribunal's choice. The mediator is to use his or her best endeavours to bring about a settlement of the claim. A further amendment provides for the Minister of Maori Affairs to report annually to the House of Representatives on progress being made to implement the tribunal's recommendations.

As part of the agreement to which the Bill refers the Crown and the New Zealand Maori Council have informed the Court of Appeal of the proposed arrangement; that was done today. I propose at the conclusion of my speech to table the letter presented to the court. The court has discharged both the directions given by it to the Crown and the consequential interim declaration made by it in relation to the directions. In doing so, Sir Robin Cooke expressed the court's hope that this ``momentous settlement'' would be an ``augury for the future'' of the partnership under the treaty. The consequence is that transfers of land and other assets to the State-owned enterprises may now proceed, subject, of course, to the agreement between the Crown

and the Maori Council.

In conclusion, I reiterate my satisfaction with the outcome of the negotiations that have resulted in the Bill. I thank the Minister for State-owned Enterprises for his sterling negotiating efforts and skills. The principles of the Treaty of Waitangi have been upheld in the decision, while the integrity of the Government's State-owned enterprises policy has been retained. That has been a joint achievement by the New Zealand Maori Council and the iwis it represents, and the Government. It sets the standard by which issues of this kind can be worked through. It is fitting that I should end this address with a proverb that, while originally delivered from the tangata whenua, speaks to all New Zealanders: whatu ngarongaro te tangata, toitu te whenua. People pass away, but the land remains for ever.

[Document, by leave, laid on the table of the House.]

Mr SPEAKER: This is not a money Bill.

Hon. J. B. BOLGER (Leader of the Opposition): I concur with the Minister of Justice that this is an important Bill. I presume that it will be referred to a select committee for the hearing of evidence, and I shall say something about the composition of that select committee later. I appreciate having been given a copy of the Bill a little ahead of time so that I could read it. Having read the Bill, I express my concern about its drafting---not its intent.

The Bill reaches back to the agreement in 1840 between the Crown and the Maori people. It also seeks to bring to an end a humiliating episode for the Minister of Justice and the Government. The Minister's calm approach hid the fact that he and his Government introduced legislation that did not in any shape or form acknowledge the matters considered by this Bill. The Minister wants to put a good face on defeat, and I cannot object to his doing so.

The Government introduced State-owned enterprise legislation that had as its central feature the transfer of vast acreages of Crown land to the State-owned enterprises. The Maori people, through the New Zealand Maori Council and, in particular, the leadership of its chairman, Sir Graham Latimer, objected to the Government's move. They argued that much Crown land was subject to claims from Maori owners or people who identify themselves as Maori owners. They argued that if the land was transferred to the State-owned enterprises and, perhaps, subsequently sold to a third party, it could be lost for all time to the Maori claimants. The Government initially refused to accept that proposition, and as a result the New Zealand Maori Council applied to the court for an injunction to stop the transfer of Crown land to State-owned enterprises. The injunction was granted on 30 March because the High Court was obviously moved by the force of the argument put by the New Zealand Maori Council, and on 1 April a judicial review was moved to the Court of Appeal.

The Government did not sit passively by listen to the arguments and accept the outcome. It argued its case against the New Zealand Maori Council, and it said that the council was wrong and that the Bill was right. The Minister may say that this move has been tremendous for him, but it is an attempt to snatch victory out of defeat in the highest court in the land. On 29 June 1987 the court found in favour of the submission by the New Zealand Maori Council. From that day onwards the Government---in particular, the Minister of Justice and the Minister for State-owned Enterprises---has been engaged in constant dialogue, debate, and, I surmise, argument with representatives of the New Zealand Maori Council as they have sought to resolve the issue of Crown land being transferred away from the Crown and sold to a third or fourth party.

The Bill sets out the conclusion of those discussions. Both the

Government and the New Zealand Maori Council support the Bill. However, I have serious reservations about it that must be raised. The claw-back provision that relates to Crown land that is sold to State-owned enterprises and subsequently sold to a third party imports a new principle into the law in that the sale that has been entered into may be overturned by a tribunal. The land may be taken back into Maori ownership if a claim is sustained. The first point that arises is what that provision will do to the value of the land. The land will be substantially devalued if it is thought that a claim could be lodged with the Waitangi Tribunal that would result in the land returning to Maori ownership. Therefore, the first point I make is that it will substantially reduce the value of land.

The second point is that such a caveat on land sales will make it difficult for State-owned enterprises to operate. They will have to take into account a complex new issue when exercising their responsibilities over large areas of land. The caveat has two negative connotations: no one will pay the market value for land that may later be taken from them by a decision of the Waitangi Tribunal, and the crucial issue of ownership of the land will not be determined by the courts, and that is the important point of the Bill. Ownership of the land will be finally determined by the Waitangi Tribunal without any appeal to another court. That part of the proposal is incredible.

The Waitangi Tribunal is a politically appointed tribunal with a minimum of four Maori members out of a total of seven members. The chairman will be a judge of the Maori Land Court, and there will be six other members, four of whom must be Maori. The tribunal clearly has political connotations, and I do not say that in a negative or carping sense. It is a fact to say that it is politically appointed. The tribunal will have the final right to determine the ownership of land that has been transferred from the Crown to a State-owned enterprise, or subsequently sold to another party.

Rt. Hon. David Lange: Subject to judicial review, of course. We wouldn't forget that!

Hon. J. B. BOLGER: The Prime Minister has experienced one or two judicial reviews. In an effort to overcome the weakness of the Government's position the Bill provides that a 90-day pause apply to any decision by the tribunal to transfer land to the claimant, during which time it is hoped that the owner and the claimant will resolve the issue. The chance of that happening in all cases is almost nil. If a successful resolution is not reached during that 90-day period the original decision of the Waitangi Tribunal will stand, and it will not be able to be appealed to any other authority. We are not talking about the civil court, in which every case has the right of appeal to another court; we are talking about the Waitangi Tribunal, which under the Bill will have the absolute right to determine ownership of land in those circumstances.

It surprises me that the Minister of Justice has brought this measure into the House in the belief that it is satisfactory. I know that the matter was decided after negotiations with representatives of the New Zealand Maori Council---and I can readily understand that they are satisfied with the position from their perspective---but I am bitterly disappointed that a former constitutional lawyer believes that it is satisfactory to ask the House to endorse such a proposal. I do not have the slightest doubt that the select committee will receive submissions on that point from a wide range of interested parties. It is a radical departure from the operation of laws in this country. It is not something that can be lightly brushed over in an effort to accommodate a difficult position.

Unquestionably, the Government has been put into a difficult position by section 9 of its own State-Owned Enterprises Act, which

states that the Crown must take note of the Treaty of Waitangi, and the subsequent unanimous judgment of the Court of Appeal. Those two provisions are proving to be a difficult combination for the Government. However, it is not satisfactory to seek an easy solution by giving all the power to a politically appointed tribunal. The Government should carefully think about that proposal. It is a further encroachment on the rights of individuals.

Another interesting aspect of the proposal is that an individual who purchases land from a State-owned enterprise will not have the right to present his or her case to the Waitangi Tribunal. The only people who will be able to present a case at present are Maori claimants ---they may or may not be financially assisted by the Crown to do so---and the Minister of Maori Affairs or any other Minister of the Crown who has some involvement with that particular land. An individual who has paid for the land and has a title deed for it---

Hon. Richard Prebble: They'll have notice.

Hon. J. B. BOLGER: Yes, he or she will have notice that there is a caveat on the land. However, the Minister did not explain that such a person will not have any right to argue his or her side of the case. What kind of justice is the Minister of Justice seeking to introduce? There will be a tribunal before which one cannot argue one's case, and the decisions of which will not be subject to appeal. The Minister of Justice, in his determination to reach a solution, has forgotten much of the law that he was taught and that he himself has taught. It is not acceptable for that proposal to pass through Parliament unaltered, and I am certain that the submissions to the select committee will concentrate on that and other matters.

The Government proposes to increase the size and funding of the Waitangi Tribunal and the research work associated with it. I have no quibble with that provision. It is to be hoped that if the tribunal can make progress on outstanding claims, and resolve them more quickly, some of the irritants in society will be removed. Although the sum involved is significant I shall not argue that point. I want the issues to be resolved. However, my concern to resolve the issues is not so great that I can accept the Minister's approach to the use of the Waitangi Tribunal.

The Minister said in conclusion that the Court of Appeal today stated that the Bill was a momentous settlement. It is a momentous settlement in two ways---it addresses the issues, and it is an attempt by the Minister of Justice to introduce something that I believe is an unacceptable dispute-resolving procedure. That is my concern, and one that I share with my colleagues. The Minister said---and I am pleased that he did---that the legislation will go before a select committee. Which select committee will hear it? I put it to the Minister that an enlarged select committee should hear submissions on the Bill because it is a very important matter traversing issues that reach right back to 1840.

Hon. Jonathan Hunt: Seven members.

Hon. J. B. BOLGER: I think seven members would be appropriate if the Minister is of a mind to implement that position. I have a bid on my left from the Opposition spokesman on justice, who suggests that it should consist of nine members, and that it should be a combination of the Justice and Law Reform Committee and the Maori Affairs Committee; that approach is probably correct. The Bill certainly requires the most careful scrutiny of Parliament. It is not a matter that concerns only New Zealanders of Maori descent; every New Zealander has a vested interest in it. Every New Zealander will be watching Parliament and will watch the select committee. We must not only discharge our responsibilities to New Zealand; we must be seen to be doing it. I reiterate my concern at the mechanism that the Minister has put forward to resolve the dispute arising from



State-owned enterprises legislation that he introduced earlier this year.

Hon. RICHARD PREBBLE (Minister for State-owned Enterprises): I say to the Leader of the Opposition that an enlarged select committee is agreeable to the Government---we could have a committee of, say, seven members. As Minister for State-owned Enterprises, I commend the Treaty of Waitangi (State-Owned Enterprises) Bill to the House, and I agree with the Deputy Prime Minister and the Leader of the Opposition that it is an important, historic Bill--not only in the history of the House, but also in the history of New Zealand. I also say to the Leader of the Opposition that it is no secret that the decision by the Court of Appeal unanimously to grant an injunction preventing the Government from transferring any assets at all to the State-owned enterprises presented the Government with a fairly major problem.

One of the reasons for that problem is that the State-owned enterprises comprise 20 percent of the investment of New Zealand and about 12 percent of the gross national product. A crucial part of the economic policy of the Labour Administration is to improve the productivity and performance of the Government's own economic enterprises. Far from leading the economy, I believe that the Government's economic enterprises have been acting as an anchor upon it.

The Government made it clear when it introduced the State-Owned Enterprises Bill that it in no way wished to contravene any of the principles of the Treaty of Waitangi. I suggest to the Leader of the Opposition, and, indeed, to all members, that it would be helpful to them to read the decision of the Court of Appeal, because it is the first authoritative ruling from the Court of Appeal on the Treaty of Waitangi in 147 years. The President of the Court of Appeal was kind enough to point out to the litigants the reason that they were able successfully to bring their actions. He said: ``What opened the way enabling the court to reach this decision be not overlooked. Two crucial steps were taken by Parliament in enacting the Treaty of Waitangi Act, and insisting on the principles of the treaty and State-Owned Enterprises Act. That the judiciary has been able to play a role is to some extent creative. That is because the Legislature has given that opportunity.'' Even though the discussions at times have been challenging, in no way will the Government back away from its commitment to the Treaty of Waitangi. An agreement has been reached because both sides of the negotiations wanted to reach such an agreement and where there is a will there is a way.

The New Zealand Maori Council brought its case in order to protect land claims by Maori people, but it also recognised that, under the Treaty of Waitangi, not only rights were granted to Maori people but also obligations, and that the Crown has sovereign rights in New Zealand. One of those sovereign rights is to be able to carry out its economic policy, and that policy is to improve the business activities of Government State-trading enterprises. It was the desire of both the council and the Government that what appeared to be conflicting objectives were resolved, to enable agreement to be reached.

As Minister for State-owned Enterprises, I report that I am confident that under the provisions of the Bill the Government will be able to carry out its State-owned enterprises policy. I realise that it will have some effect on business confidence because some suggestions have been made that the Government may not be able to reach its budgetary targets and a budgetary surplus. The Bill makes it clear that an immediate effect of it will be that the Government will most certainly reach its targets.

The second point---not in any degree of priority---is that all Maori claimants now realise that their claims and rights are

preserved. One of the central questions that was put to the Government was that it appears that the Government does not own all of the land that it wants to transfer. On behalf of the Government I said---and I should like to think that it is an opinion shared by all members---that the Crown does not want to exercise ownership over land that it does not own, and that it wants that land to be returned to the right owners. A process has to be gone through to determine the ownership, but the principle is quite clear: the Crown does not believe that it has any moral right to occupy, or exercise ownership over, land that it does not own. It does not matter when the Crown took over the rights of ownership of the land; the question is, does it own the land or not? If it does not, it should be returned to the rightful owners. One either believes in the rule of law in relation to ownership of land or one does not. The Government believes in the rule of law and it does not want to exercise the rights of ownership over land that it does not own.

The Leader of the Opposition made a couple of points to which I want to respond. He said that he was a little concerned that ownership of land would be determined by the Waitangi Tribunal. I point out that that tribunal has now been in existence for more than a decade, that it existed right through the period he was in Government, and that at no time did he question its integrity. I also point out to the member that the tribunal is still subject to the law of New Zealand, and to what is called judicial review. As an example of how profound judicial review can be is the reason for the Bill in front of the House right now. Judicial review requires any tribunal to act in a proper fashion, and I am sure that the tribunal will realise that when exercising its powers.

The member then raised the question of a third party. I believe that that issue was a red herring. At the moment there is land owned by the Crown and there are claimants---most of whom are known about---who have made claims against that land. The claimants have told the Crown that the land can be transferred pending the outcome of the claim, as long as notice is given of the claim so that anyone purchasing land knows of the claim. However, the case is between the Crown and the Maori claimants. If third parties buy land they have rights of hearing against the Crown under the Public Works Act, and, no doubt, they will bring a case against the Crown to ensure that they are fully compensated if it should turn out that the Crown did not own the land and that it had to be returned to the rightful owners.

I congratulate the members of the Maori Council and the Maori members of Parliament on the advice they have given me about the matter. I think that I have been on a fast learning curve in the past 6 months. I thank the officials who have been involved in the discussions. They have acted commendably in drawing up a historic agreement. While I am pleased that the agreement enables the State-owned enterprises policy to go ahead, it is much more important that the Bill gives enormous confidence in New Zealand's future. The spirit of the treaty---the partnership---has come through; it has enabled the parties to reach an agreement, and will enable New Zealand to proceed into the future with confidence. I commend the Bill to the House.

WINSTON PETERS (Tauranga): The unanimous Court of Appeal decision in June 1987 was momentous, as is the Bill. However, I would be less than honest with my electorate and the people of New Zealand if I did not express some disquiet about the Bill. I want to know why the Minister of Maori Affairs did not present the Bill---it is properly his responsibility; he is the Minister of Maori Affairs, and I want to know why he has again been downgraded before his own people in the House and has had someone else take responsibility for Treaty of

Waitangi legislation. He should tell the House why he is playing second fiddle to a person from Christchurch who knows very little about Maori issues, as he has demonstrated in the past year.

No matter what bright complexion is placed on the Bill by the Government, it is the Government members who are embarrassed, and the Minister of Justice is the one who should be most embarrassed. Tonight he talked about section 9 of the State-Owned Enterprises Act. However, on 30 September he did not mention it. Not a word, a murmur, or mention was made of section 9 in his introductory speech. However, tonight he gives of his multicultural conscience. Opposition members will not swallow that.

Trevor Mallard: Why didn't the Minister mention it?

WINSTON PETERS: He did not mention it because he thought it was of no great significance. What was of significance was that the New Zealand Maori Council took him to court, and when he was beaten he turned round and said that he was pleased that he had been beaten. Opposition members and the Maori people will not swallow that. The Bill represents the final sorry chapter in an exercise in deception that ultimately failed because of the vigilance of the New Zealand Maori Council. I say again that the Maori Council has my unreserved congratulations on having done that.

The Minister of Justice is a former professor of law. When I moved an amendment on 11 December 1986 to protect the rights of the Maori people he spoke in the House. Hansard, Volume 476, at page 6193, reports him: "It has been the subject of a recommendation made by the Waitangi Tribunal, and, in all respects, the Bill ensures that the rights of people to make claims under the Treaty of Waitangi Act are in no way prejudiced." That statement was and is palpably and demonstrably false, but he nevertheless said it. He must have known, as a professor of law, that it could not be applied. However, on 11 December 1986 he and his 36 colleagues voted against my amendment.

Within 3 months they faced the biggest land case the country has ever seen, yet he tells the House that he is concerned about the land and that the people may pass away. We are not fools, and we will not swallow that line. The Minister has been badly caught out in relation to the issue. In December 1986 he gave a false argument; by March a major land case loomed; and by June his position had been unanimously overturned. I am concerned about the cost to taxpayers of a governmental blunder of monumental proportions. That shows that the commitment of the Administration to either Maoridom or taxpayers must be seriously questioned. I refer to the issues of the Bill that I believe are serious, because I believe that the New Zealand Maori Council went to court to preserve the rights that it had in December 1986. However, as a result of that court case, a Bill has been introduced that has magnified those rights---not in relation to its claims, but in relation to the Waitangi Tribunal and its powers. It is that issue that I want to talk about. The Maori Council sought to maintain and retain rights held as at December 1986.

However, a matter has emerged in the Bill that every New Zealander---no matter of what race---should be concerned about. The composition and the system of appointment of the Waitangi Tribunal is at the heart of the issue; it was not at the heart of the council's complaint or of the court's decision. At least four of the members of the tribunal must be Maori people, and they are appointed by the Minister of Maori Affairs in consultation with the Minister of Justice.

The Minister's capacity to make the appropriate appointment is cause for concern. The issue is that the Minister has given those people the power of the Law Lords in relation to land that is of immense financial value. I did not believe that such a recommendation could be made to Parliament in such a cavalier fashion. I tell the

Minister of Justice that people are concerned about the state of New Zealand's race relations. If the law is to stand up, people must have confidence in it. Half of the Minister's colleagues are talking about abandoning the Treaty of Waitangi and renegotiating it. The member for Northern Maori knows what I am talking about. Half of the Minister's colleagues are covertly talking about abandoning the treaty and starting afresh. Maori people should remember that, and not those fine words and lofty expressions by men of little faith that have been spoken during 12 months' opposition to Maoridom. Maori people should not remember those words, but, rather, the actions of those people who would seek to turf out the Treaty of Waitangi without so much as a by-your-leave.

The tribunal's powers in relation to the Bill are binding. Before the Bill the tribunal only had a recommendatory role. I do not believe that people will live in confidence with the kind of racial bias that the Bill builds into the membership of the tribunal. How can that be when not many people have expertise in Maoridom who can be selected as members of the tribunal? How can it be that less than 10 percent of the population should have a majority of binding powers?

The House should be cautious, because I believe that in time I will be proved right if the Government persists in relation to the immense powers that are being given tonight to the tribunal in the way in which it is framed at present. If the tribunal is to be given such powers, its calibre must be improved, and the number of members on the tribunal must be increased. I do not want to criticise any member of the tribunal, but if those members are to be given powers that could have immense ramifications for New Zealand they should at least have the status, capacity, and ability of High Court judges. Failure to appoint tribunal members of such status will quickly cause a lack of confidence.

The final point I make is that the issue of appointments to the tribunal is of fundamental importance. The Soviet Union tells its people who will be their defender; the Iron Curtain countries dictate who will be the people's counsel at court; however, this Bill tells the people that they have no rights at all. Claimants would have every right to say: ``For goodness' sake, this Crown Law Office did such a poor job on the last case---why should we have any confidence in it this time?'' The Bill is against natural justice and it should be redressed. The New Zealand Maori Council must be congratulated, but the magnificent work it has performed is not the subject of the Bill. The extra parts of the Bill will need to be corrected in the select committee if we are to advance with any sense of future racial harmony in New Zealand.

Hon. K. T. WETERE (Minister of Maori Affairs): In pursuance of the memorandum I handed to you, Mr Speaker, I shall translate my speech at the appropriate time: Te mea tuatahi ano kei te mihi atu ki te Whare katoa, kia koutou e Ta Kereama me te Kaunihera Maori, ki o tatou rangatira e whakarongo mai i waho i te Whare nei i nga ahuatanga e korero tatou me ki mo te taonga nei i haina ai i o taua matua i o taua tupuna i te wa. Me ki e tika tonu nga korero i korerohia ai te Pirimia Tuarua i roto i te Whare nei i korerohia nei e tatou i tenei wa.

No te rua tekau ma iwa o Hune i tenei tau i puta mai te korero a te Kooti Piira me haere korua ra te Kaunihera Maori me te Kawanatanga, ki te kimihia tetahi wahanga hei mene mana ki te ture i haina e tatou i te kawanatanga i tera tau. Koia ra te patai. I tenei ra, kua hoki mai ano te Minita me te pire e nga korero e nga Whakaeatanga a te Kaunihera Maori me te Kawanatanga. Tenei ra te mihi atu kia koe taku rangatira ara me aku tuakana, i tautokongia ai te kaupapa i korerohia ai ki te Kaunihera Maori. No reira kei te tautoko

atu nga mihi atu kia koutou e Ta Kereama ma.

Tuarua ka whakarongo au nga korero i korerohia ai i te mema mo Tauranga, kaore i ia i mohio ai i te ihi, te mana, te tapu o nga korero i korerohia ai a te Kaunihera Maori ki te kawangatanga. Mohio tonu ratau i te ihi, te tapu o nga mea nei i haina ai e o ratou Matua mai ra ano i te wa. Koia nei ra te korero hei korero atu kia koe, kia mohio ai i pewhea ai te tautoko ai i te kaupapa i tenei ra. Na Koia nei ra nga korero ko ia Whakaatu nei i aku tuakana i tenei po.

Tuarua me te hoatu ano i te mana ki te Taraipiunara hei kokiri i nga Whakaeatanga i korerohia ai e te iwi a tae noa atu ki te Kawanatanga. Ki au nei, Koia ra tetehi wahanga tino nui, kia mohio mai te Whare nei, no tenei poetitanga i roto i nga kaupapa a te Roopu Reipa, i reira e iri mai ana te korero nei na, me whakapanuitia atu te kaupapa a te Taraipiunara i tenei wa me ki Kua puawai nga korero i korerohia ai e tatau i tekau ma rima o Akuhata. No reira kia mohio mai e koutou koia nei ra nga whakaputanga i tenei wa me nga korero e korerohia ai i roto i te Kaunihera Maori.

Noreira kei aku rangatira ahakoa enei korero pito kia tatou i tenei wa, tenei ra te mihi atu kia koutou e noho mai na i runga i o tatou Marae Maha, ma te wa ka kite ano tatou i roto i te Komiti hei wananga i nga korero i roto i te Pire nei e korerohia nei tatou i tenei po.

No reira, kia timata ai ratou ara, koutou i te kokiri ai i o koutou whakaaro i runga i te Pire nei i te tau e haere mai nei. I taku mohiotanga kei roto i ona nei korero nga whakaeatanga tae atu ki te Kaunihera Maori me penei hoki i nga whakatakotoranga korero mo tenei Pire i te tau e haere mai nei. No reira, tena koutou, tena koutou, tena koutou.

I have simply said that I want to place on record my congratulations to the New Zealand Maori Council, Sir Graham Latimer and his people, and the legal advisers. I shall talk about the decision made today. As I said in Maori on 29 June 1986, the Court of Appeal made the following recommendation: ``Work together'---meaning the council and the Crown---``to find a better mechanism in so far as section 27 of that Act is concerned, to see how land can be transferred.' I believe that that agreement has been reached this evening. I do not think that the Leader of the Opposition and the member for Tauranga, in making their assertions, understood how those decisions were made.

Winston Peters: Don't be ridiculous---the Minister voted down my amendment.

Hon. K. T. WETERE: If the member had understood the depth of the Treaty of Waitangi he would have understood the kinds of discussions that were held between the Council and the Government. I had expected the Leader of the Opposition and the member for Tauranga to support the Bill---not only because of its historic nature, but also because the National Government did not make one amendment to the Bill that was originally introduced by the Hon. Matiu Rata.

Hon. J. B. Bolger: If the Minister doesn't understand the difference in the powers between now and then, God help New Zealand!

Hon. K. T. WETERE: The Leader of the Opposition says that I do not understand the power. Before the election in August, Government members said that we would consider the matter, and if the Leader of the Opposition cares to look at the Labour Party manifesto he will find the matter referred to there. Of course he will not do that, and that is why he is the Leader of the Opposition. The difference between us is that when the National Government was in office he did not once make an attempt to enhance the Tribunal's work. I can recall being an Opposition member, and trying to help the National Government solve the Motunui problem. I am sure that the member for Maramarua remembers that. All that happened then was that the

National Government agreed to two recommendations; it threw the third and fourth recommendations in the ``too hard'' basket. The Prime Minister of the time said: ``Look here, Koro, I want you and your colleagues''---he was referring to me and my three colleagues. I said: ``Yes, sir, you've got it.'' The result was that the entire caucus was on my side.

The former member for Hamilton West, the former member for Waipa, and one or two other National Government members said: ``We're on your side, Koro.'' It is strange that history has a habit of repeating itself. I am recounting this story because some Opposition members who are present now were not members at the time. However, they need only travel to Taranaki, and I am sure the Leader of the Opposition recalls what happened at that time.

Hon. J. B. Bolger: The Minister took the select committee to the marae at Waitara.

Hon. K. T. WETERE: Yes, I sat on that committee, and I am sure that the poor old chairman, the member for Marlborough, was on my side; I think the present member for Maramarua was all on his own. I believe that that is the way it was.

Hon. Richard Prebble: The member for Tauranga had ``retired''.

Hon. K. T. WETERE: The member for Tauranga does not know what I am talking about---he was not even a member then.

Winston Peters: I raise a point of order, Mr Speaker. Although I know that the Minister is allowed great licence during an introduction speech, I point out that neither the Maori part of his speech nor this part relate to the subject-matter of the debate, which is whether or not the Bill should be introduced.

Hon. K. T. WETERE: Speaking to the point of order, I point out that I am refuting the accusations made against myself and against the Government.

Mr SPEAKER: It is my judgment that the Minister has been replying to points made earlier, interjections, and invitations from members to comment on certain aspects. The English-language part of his speech has been the minority of the speech so far, and I take the Minister's word that he will now turn to the details of the Bill.

Hon. K. T. WETERE: I have been doing that all the way through. The tribunal has been referred to by my colleague, and I also said that I look forward to our people making submissions to the select committee. I listened to the contribution of the Leader of the Opposition, and thought it was fair enough, and that no one would be alarmed by it. I also referred to the composition of the tribunal, and it may well be that the level of academic qualifications will have to be considered. I recall that when the original Bill was introduced the Government said that it would put people on the tribunal who had a wealth of experience in all matters relating to Maori values, and also people from the legal fraternity. I should like to think that the appointments were done on that basis, and I did not hear any objections from the member for Tauranga about those people.

Winston Peters: They had only recommendatory powers then.

Hon. K. T. WETERE: I thought that of all the people who were consulted they were the best possible people.

Winston Peters: Their powers have changed, and that's why the issue is serious.

Hon. K. T. WETERE: I have already said that an indication of that was given during the recent election, and if the member for Tauranga consults the manifesto he will see that that was so. I welcome the Bill, and I look forward to sitting on that committee and listening to the representations that will be made to it by all of our people, and particularly by the people whom the Leader of the Opposition and the member for Tauranga referred to. I shall leave my remarks at that

point by saying to the people who have helped us, and particularly to the New Zealand Maori Council: kia koutou e rau rangatira ma tena koutou. Again I thank all of those who have been involved.

Mr McLEAN (Tarawera): It is extraordinary that after spending perhaps \$100,000 of taxpayers' money on trying to stop the finding the Government now states that it was its own idea. I have a newspaper report of the Court of Appeal case that shows that the Crown and the Government sent along the Solicitor-General---not an office boy---to say that the Maori Council was wrong, that the land claims were in the past, and that the case was about Crown land and had nothing to do with the Maori Council. The Government also sent along Mr David Williams, QC. He is no slug; he is one of the most brilliant and able lawyers in the country. He was chosen by the Government to go to the court and say that the Maori Council was wrong. Now that the Court of Appeal has made its decision, the Government claims that it was all its own idea. Let the people---Maori and pakeha---judge!

The Bill is probably the most important Bill brought before the House since the Treaty of Waitangi, and will probably be the most important Bill affecting the future of Maori and pakeha in New Zealand. The Court of Appeal has given an opportunity for Maori land claims to be resolved fairly and finally, in a way that is fair to Maori and pakeha alike, in a way that is fair to the claimants and fair to the taxpayers. The House should contrast the position taken by the Government on the claims when it asked the Court of Appeal to rule that the Maori Council was wrong with the position taken by the Opposition when it tried to amend the original State-Owned Enterprises Bill by inserting the very provision that the Court of Appeal managed to find somewhere in the law---and that is to the court's credit.

Hon. David Butcher: It was in the Act.

Mr McLEAN: The member should go back to his geothermal mess. The complexities of the case are considerable, and the House is skirting around the edge of the Act of Settlement 1679, or whenever it happened. The discussion is about the rights of the courts and the rights of Parliament. I make the point that I believe that the House can, and should when necessary, make amendments to the Bill, despite the agreement made between the Maori Council and the Crown. Parliament has a right to make amendments, and it should do so. It can do so without infringing any of the rights and opportunities of the Maori people, because I am told that Sir Robin Cooke, the President of the Court of Appeal, said in his judgment today that the Maori Council does have the right to reopen its case should events occur in another place that made that course necessary. We can and should fix up the Bill.

I shall consider the effect of the Bill on State-owned enterprises. Those enterprises will be buying millions of hectares of land from the Crown. That land will eventually comprise much of the South Island, and many of the forests. The Land Corporation will be buying huge areas, and as well as the farms and forests there will be dams and power stations, and even post offices---mostly derelict post offices, but still buildings on valuable sites. The Government is on the brink of settling the price of those assets, and the Bill will make most of those assetse virtually worthless---or at least the land on which they stand will be virtually worthless.

Hon. Peter Tapsell: What rubbish!

Mr McLEAN: I shall explain to the Minister of Forestry and Minister of Lands, because he will inherit the problems. Let us consider a specific instance such as the Chief Post Office in Auckland, and the Chief Post Office in Hamilton. Both of those buildings are on fine sites, both are far too big for New Zealand

Post and Post Bank, and both sites offer real opportunities for redevelopment. When the Government sells the Chief Post Office in Auckland and the Chief Post Office in Hamilton to New Zealand Post, New Zealand Post will not get a clean title. The title will have on it a caveat that states that anybody who buys the land might have it taken from them again. New Zealand Post will not get a clear and guaranteed title. How can it expect to develop prime sites if it cannot get clear title to the land? Who would buy the sites knowing that the Waitangi Tribunal might take them away? Who would go into a joint venture with New Zealand Post knowing that the Waitangi Tribunal might take the land over and leave the purchaser or the joint venture partner at the mercy of the Public Works Act?

The problem for New Zealand Post is not solved by its trying to develop the sites, because who would finance such developments knowing that a mortgage would be worthless in view of the caveat on the title? Those two post offices are but a small example of the problems to come. The sites are valuable and probably worth millions of dollars, but they are only an example of the billions of dollars worth of Crown land that will be sold to the State-owned enterprises at a vastly diminished price. In making decisions on Crown assets the Ministers now have two choices: one is to hand the assets over at the depreciated value that the Bill has given them---

Hon. Peter Tapsell: Rubbish!

Mr McLEAN: The Minister of Lands suggests that the Government will not do that, so the alternative is to hand the assets over at a value vastly inflated above their worth. That is because the Maori Council has a claim over those assets, and that claim must be reflected in the value. State-owned enterprises such as New Zealand Post and the Railways Corporation do not have an opportunity to make a go of things if they cannot get reasonably clear title to their assets. The House should consider some of the other Government corporations, and I refer in passing to the Rural Banking and Finance Corporation of New Zealand Bill that was introduced this morning. Do the provisions in this Bill apply to the Rural Bank? Will every Rural Bank mortgage be caught under the Bill, or when both Bills are passed? The Government is setting up new State corporations and the State-owned enterprises, but is tricking the Maori people by not quite making organisations such as the Rural Bank proper State-owned enterprises. I ask the Minister---and perhaps the Minister of Lands will take an interest in this matter---whether pastoral leases are caught by the Bill.

Hon. Peter Tapsell: They're specifically excluded.

Mr McLEAN: In this Bill? I suggest that the Minister read the Bill and say where it is stated in the Bill that a pastoral lease does not have direct right of purchase. The pastoral leases are still in limbo. The decision has not yet been made.

Hon. Philip Woollaston: The decision was made a year ago.

Mr McLEAN: The decision has not been made, and the Associate Minister is as confused as the rest of the Government. Are leases in perpetuity caught by the Bill?

Hon. Philip Woollaston: They can't be.

Mr McLEAN: Well, put that in the Bill. If they are not caught, say so. I shall say one word about the expectations of the Maori people. The youngsters at Murupara will not wake up on Monday morning with jobs, skills, and free of crime because of the Bill. The Bill will give them hope and opportunities for the future, but it will not solve the economic and social problems of the Maori people or the pakeha people of New Zealand. It is a Bill that offers the opportunity to resolve the land issues in time, but it does not in itself resolve race relations issues in New Zealand.

Dr GREGORY (Northern Maori):



E te rangatira o tenei Whare  
tena koe.  
Enei kupu o nga tupuna  
Toi te kupu  
Toi te whenua  
Toi te mana  
Nau te rourou  
Naku te rourou  
Ka ora ai te iwi

Ki nga rangatira o tenei Wharehui me nga tupuna kua haina te Tiriti o Waitangi ara nga tupuna katoa o tatou i roto i tenei Whare me nga tupuranga kua taemai nei tena koutou, tena koutou.

Kei te iwi whanui nga iwi o te motu, kei raro i tenei Tiriti o Waitangi te kotahitanga o nga iwi katoa o Niu Tireni.

I have mentioned two sayings that are well known in Maoridom, which I thought were appropriate to the Bill: ``Prestige in the word, prestige in the land, and prestige in the mana of the individual. With your food basket and with my food basket will the health of the land be attained.'' I also paid respects to the ancestors---our ancestors, I believe; yours and mine---who signed the Treaty of Waitangi, and to their descendants, many of whom are here in the House this evening. What the treaty has done, and what in its wisdom the Court of Appeal has brought down in its decision, represent the concept of bringing us together as one people. That is the message that the House and all those who are listening tonight need to pay particular attention to. I hope that those ancestors will rest in peace. I believe that they are here with us this evening, because it is they who are responsible for bringing about what is taking place. People may say that perhaps that illustrates a sense of mystique---a person who perhaps has not got his feet on mother earth. We have to examine the principles inherent in the Bill and see whether, if we search deeply enough, they can be faulted. That is the challenge that faces the House.

It is not the question of money---certainly, from the Maori viewpoint, that is the least important aspect of this exercise. I would like to think that, despite the concerned questions asked by members---particularly Opposition members---about race relations in New Zealand, the challenge that the Bill makes is whether we are prepared to make race relations work. It is not a question of how hard we can tear things apart, but how hard we can keep together talking in amicable terms with a positive view towards the future. I believe that the Bill goes a long way towards achieving that result.

I have listened very carefully to the arguments that have been put to the House by the Opposition and I am concerned. The points that it constantly raises are the issues of race relations and racism. That is a totally negative attitude. It was interesting that one member asked why the Minister of Maori Affairs had not introduced the Bill. The answer is---and I refer again to the wisdom of some of my tupuna, who kept reiterating it---that the treaty will speak for itself. The Bill does not need a Maori to introduce it. That point does not matter, because history has shown that, despite the attempts by many to deny it, ignore it, and wish it were not there, the treaty constantly resurfaces---and here it is again with us this evening. Why should we be fearful of it? The tupuna of the pakeha signed it, and the tupuna of the Maori signed it. They managed to do that in 1840, and we are wondering whether, in actual fact, we will be able to do it tonight. That is the challenge to the House. I believe that the Government will be able to do it.

There is a question in relation to the tribunal---that ogre that has been raised on several occasions in the past---yet I believe the mana of that institution has stood the test of time. As I understand

it, its mana has not been abused by either side of the House. It would be interesting, perhaps, if we asked the members of the Tribunal their political persuasions. That matter is not behind the Government's thinking about the membership. The interests of those people, both Maori and pakeha, are the interests of the nation. Members have said that there are four Maori people on the Waitangi Tribunal, and that the chairman should be the Chief Judge of the Maori Land Court. At present that person happens to be a Maori.

Let us look around the House if we are to take the argument further. What percentage of members of the House are Maori? What attempts are being made to redress that position? It is not a matter of numbers. The matter of attitude and justice would go a long way towards achieving that objective. The Bill is another turning-point in the history of the land. It makes reference to the State-Owned Enterprises Act 1986. The matter of the Treaty of Waitangi is contained in that Act. Had that not been so, the decision made by the Court of Appeal would not have been taken, because it would not have been able to redress the matter that was put to it by the New Zealand Maori Council and those who supported the arguments relating to the Treaty of Waitangi. So here we are again with the Treaty of Waitangi before us, constantly pricking our consciences in order to ensure that justice is done through a document that was the creation of the nation. There need be no fear about what is happening at present. The challenge is whether we are able to retain a sense of calm and dignity in pursuing the meaning of the document signed in 1840, which will ultimately lead to harmonious race relations. That position cannot be achieved in any other way.

Mr GRAHAM (Remuera): I agree entirely with earlier speakers that the Bill is a most important measure. I begin by pointing out that the rule of law in New Zealand, as elsewhere, is absolutely fundamental in any body politic, and the legal system that incorporates and promotes the rule of law provides the discipline in any given society. But the rule of law is a very fragile animal, as is the legal system, and ultimately it depends on the respect and esteem in which both are held by the people in that body politic. That respect must be earned; it cannot be enforced. It is earned when the law is seen to be fair and just. When it fails that test, anarchy can often follow.

Members have to ask themselves tonight how that respect is gained. The law must be just, and it must be seen to be just. What is required to establish that? First, a court or tribunal must be impartial in the administration of justice. Secondly, alternative points of view must be able to be advanced before the court or tribunal. Thirdly, some form of appeal ought to be available. Those basic principles have been part of society for hundreds of years---irrespective of the culture of the people who were here, their ethnicity, or their creed---and apply equally in any jurisdiction.

Tonight's legislation---an attempt to resolve an impasse on a most important issue---touches on the quintessential requirements for a just society, and it is even more important when there are cultural differences that can be a real or potential problem. What does the Bill do? The court or tribunal that it sets up and empowers is not impartial. It has a majority of Maori people on it. It has the power to accept evidence that is not normally admissible. The legislation requires and entitles the tribunal to find as fact historical events that are almost incapable of proof. The tribunal has great mana. It deserves that. It may not be a judge in its own cause, but it will be seen to be a judge in its own cause. Therefore it fails on the first count.

What about alternative points of view? They are denied. Only one

party can appear before the tribunal to put its case---the claimant---as well as the Minister of Maori Affairs or any other Minister who may have an interest. But if the land has been sold by the State-owned enterprise to an innocent third party subject to the caveat, the only Minister who can be involved is the Minister of Maori Affairs. Not even an amicus curiae is appointed to represent opposing views. Therefore the justice of the case fails on that ground, too. What about the appeal? There is none. There may be a right of judicial review to make certain that the tribunal has acted lawfully, but that is not an appeal against its findings. It therefore fails on that ground, also.

Claims by the Maori people as a disadvantaged partner under the treaty must be processed expeditiously, but that partner cannot hear the matter itself without the presence of the other partner. It must finally be a decision for the Government. There might well be an expanded tribunal with greater investigative powers. It may make recommendations to the tribunal. But it is ultimately the Government, representing the highest court in the land, and representing all New Zealanders, that must be seen to be the final arbiter of those issues.

No Government can, or should, abdicate that ultimate responsibility. Why, then, is the Government doing just that? Is it necessary to breach that fundamental rule of law? I think not. There is no need to vest such a power in the tribunal, as is suggested, with the risk of bringing the tribunal and the justice system into disrepute. There is no reason at all for the final decision to be taken from the Government, the representative of all New Zealanders.

I am sorry to be critical of the settlement that was reached. I have said before, and I say again, that I am more than happy and willing to support any proper proposal to resolve as quickly as possible the problems that have arisen during the past 140 years, but I cannot support a proposal that will not only promote race relations in New Zealand but that may well have the negative effect of creating a more divisive and unhelpful position than exists at present. Let us commit ourselves tonight to working together to try to resolve the differences in this difficult and complex issue that have been highlighted again in the Bill before the House. Let us reassure everyone, especially the Maori people, that we are serious about and sensitive to the issues involved; that we may have opposing views as to how the issues might be finally put to rest, but that there is a strong willingness on the part of all of us to come to the right conclusions---not only in the interests of the Maori people, but in the interests of all New Zealanders.

Hon. PETER TAPSELL (Minister of Police): Those of my colleagues who preceded me explained clearly that the Bill gives effect to an agreement---a unique agreement, and, I suspect, what will eventually be a historic agreement---between the New Zealand Maori Council, acting in general on behalf of Maori people, and the Crown, represented by the Government. The aim is to ensure, on the one hand, that the Government's policy shall proceed, and, on the other, that those Maori people who have yet to lay a claim before the Waitangi Tribunal relating to the transfer of Crown land to the State-owned enterprises do not find that that land is placed irretrievably beyond their reach.

I diverge for one moment to make it clear---because I feel there is much confusion, in the main out of ignorance, but on occasions, I think, deliberate---that Crown land in the context of the Bill is Crown land as defined in the Land Act, and is only part of, and very much less than, the lands of the Crown.

The agreement is unique and of great importance, not only to Maori people and the Government, but to all New Zealanders. I will devote

my time to traversing the genesis and the effect of the Bill as clearly and as carefully as I can. As part of Government policy, and as a means of ensuring the greater profitability and greater efficiency of certain State trading organisations, the Government determined to transfer the assets---including real estate and the liabilities of those trading organisations at present subject to ministerial and departmental control---to the control of public bodies, which are now called State-owned enterprises. During those discussions---and now subsequently in the Bill---certain areas of Crown land were specifically excluded from transfer under the State-Owned Enterprises Act. The lands excluded under the Bill were all lands subject to licences under section 66 of the Land Act---pastoral leases---and all lands that had up to that time been subject to a claim under the Waitangi Tribunal.

During the formation of that Bill, my colleague the Minister of Maori Affairs expressed concern that proper provision be made to ensure that Maori interests were protected---indeed, it would not be an exaggeration to say he fought doggedly to ensure that there was adequate protection for the Maori people who would subsequently bring a claim to the tribunal, and whose claim would be sustained, and held by the tribunal to be such as to require the return of the land. The outcome of that concern was to incorporate into the Act a provision that, in brief, states that the Crown, in exercising that Act, may not act in a way that is inconsistent with the Treaty of Waitangi. That was a unique decision, and was the effect of section 9 of the State-Owned Enterprises Act.

The New Zealand Maori Council, having considered the Act, believed that it did not provide sufficient protection for Maori land, and determined to take the matter to the court for a ruling. That was done with the full knowledge of the Government---and Government members, for their part, were as interested as the Maori Council to hear the outcome of the ruling made by the High Court. I think Judge Heron presided over the High Court case; the subsequent hearing in the Court of Appeal was presided over by Mr Justice Cooke, who brought down the ruling that has now become a historic document. I do not remember the exact words, but the essence was that, first, the Government might not proceed to transfer Crown land to the State-owned enterprises; second, the Crown and the New Zealand Maori Council should meet and attempt to work out a compromise that would be satisfactory to both parties; and, third, if it was not possible to reach satisfactory agreement the court would come down with a finding. In essence, that was the finding of the Court of Appeal.

We then progressed to a period of very intense and earnest, but amicable, discussion between the New Zealand Maori Council and the Government. The outcome of those discussions is the agreement signalled in the court earlier this afternoon, and now part of the Bill. It is important to point out that the Bill excludes two further areas of land from the resumption clause---those lands that are subject to the deferred payment licences, and those lands that are leased and in which the lessee has a right to resume the freehold to acquire the fee simple.

In summary, the Bill provides for certain Crown lands to be transferred to the State-owned enterprises and for those organisations to deal with them as they see fit, subject to the requirement that, if a Maori party subsequently appears before the tribunal as a claimant on the land, and the tribunal finds in favour of the claimant and rules that the claim can be satisfactorily settled only by the return of the lands, those lands will be resumed compulsorily by the Government under the Public Works Act. It is important to point out that the Public Works Act in this instance is used solely as a means of effecting the transfer of title from the

former owner to the new Maori owners.

We are talking about Crown land, not lands of the Crown. Crown lands are very much less in area than lands of the Crown, which include lakes, the railways, reserves---the lot. Moreover, we are talking about Crown land less, by virtue of the State-Owned Enterprises Act, those lands that are subject to licence under section 66 of the Land Act---the pastoral leases---and less those lands that were previously subject to a claim to the Waitangi Tribunal, and, by virtue of the Act, those lands that are subject to a deferred payment licence and those lands that are the result of a lease in which the lessee owns a right to acquire the fee simple. Those are the lands we are talking about, and they are considerably less than some people seem to believe.

I want to deal with the Bill from the point of view of the Maori people. There are Maori people who express concern that they will be now cast in the role of beneficiaries under an Act that they have until now detested and hated---that is, the Public Works Act. It has been made clear to them that that Act is to be used solely to effect the transfer. The Government has embarked upon a generous and responsible attempt to remedy a longstanding problem. For my part, I feel no humiliation whatever in being on the Government's side on the Bill. New Zealanders have no great cause for concern, because we are dealing with small areas of land. It will be clearly stamped on the title to those lands prior to purchase that they are subject to resumption.

I will deal briefly with two last points. The previous Opposition speaker made the point that four of the seven members on the Waitangi Tribunal are Maori. I do not recall that the New Zealand Maori Council expressed any concern at appearing before and laying its future before the Court of Appeal and, to my knowledge, no member of that court is a Maori. The second point is that up to now the tribunal has acted responsibly in every way, and we have no reason to believe that it will act in any other way in the future. My last point is that there are those who said that a purchaser from a State-owned enterprise would not have the right to appear before the tribunal. However, that person is not a party to the action. The action is between the Maori people and the Crown.

Hon. W. F. Birch: But he or she has an interest in it.

Hon. PETER TAPSELL: That person has no interest in the action. The matter is between the Maori people and the Crown, and such rights as that person then owns will have been clearly set out at the time of the purchase of the property from the State-owned enterprise. I am happy to support the Bill.

WARREN KYD (Clevedon): Everyone agrees that the Bill is most important. Many people are apprehensive about the Waitangi Tribunal. It is important that the Bill is a good Bill. As usual, it was produced to the House at very short notice. It was the result of panic by the Government, which was committed to solving the problem with the State-owned enterprises by 7 December. The Bill shows all the hallmarks of panic, because it is full of gaps and emptiness. I am concerned that people will be apprehensive that the Bill is not fair and that it does not have practical solutions to the problems that have emerged with the State-owned enterprises. Those problems remain. It is important that people of both races should consider the Bill as a reasonable solution. I am not certain that the Bill will be seen as reasonable. It is impossible to contemplate the results of the Bill. What about the dams owned by the Electricity Corporation? The tribunal will decide whether the land should revert to the Maori tribes. If the land reverts, do the dams revert with it? Normally the fixtures run with the land. The Bill makes no provision for compensation should fixtures revert. Some rather horrible problems

could arise, and I am not satisfied that the Bill will cover them. I should like the Minister to explain that, because it is possible that the land may be worth thousands of dollars and the fixtures could be worth millions of dollars.

If the Petrocorp site is owned by a State-owned enterprise---as I believe it is---it may be worth hundreds of thousands of dollars only, and those total assets could be worth hundreds of millions of dollars. If the land has to revert with the fixtures, would the people be deprived of those valuable assets? What about the forests? If the tribunal finds that the land really does belong to the Maori people, do the forests pass over with it? Is there any way in which the compensation can be fixed? The Bill does not appear to provide for land that has great value added to it. If fixtures pass with the land, the Crown---which represents the people---could be deprived of hundreds of millions of dollars worth of assets. Would the buildings belonging to Land Corporation Ltd pass with the land? Should they belong to all New Zealanders? I should like to hear what the Minister has to say about that.

The Bill will cause grave administrative inconvenience. It may well be that some of the State-owned enterprises want to sell their assets, and that it is proper that they be sold. However, the tribunal has about 140 cases that have yet to be heard. A State-owned enterprise that has sold land could wait for years. No one wants to buy land that is subject to a claim by the Maori people, given the number of years that it will take to sell it. The tribunal could tie the country up in a most invidious position, and New Zealanders are right to be apprehensive about that possibility.

The Bill does provide for compensation to be paid to State-owned enterprises under the Public Works Act. That would mean that people may have to pay compensation to State-owned enterprises. I am concerned that that figure may not be fair and equitable having regard to the value of the assets, the way in which they were acquired, who built them, and who paid for them.

I am also concerned about the constitution of the tribunal. The Chief Judge of the Maori Land Court has been appointed by the Minister, along with six other people, four of whom must be Maori. A Maori majority is built in. I am satisfied that the tribunal will be fair and reasonable, but New Zealanders may not be satisfied, because they may consider that the tribunal should represent all people and that it should not be loaded in favour of one race when issues to be decided affect the whole population. That will create considerable apprehension. Members of the tribunal should have the highest qualifications, and have intellects and training equivalent to those of High Court judges, if not higher.

If people other than Maori people have an interest in a claim and believe that the Crown does not have the right to state their case, I believe that they should have that right. A tribunal that makes monumental decisions of that kind should have the powers of a commission of inquiry. The tribunal should have power equivalent to a court so that justice can be seen to be done. The terms on which some of those momentous decisions will be made are vague and do not give much guidance to the tribunal consistent with the Treaty of Waitangi. The treaty has massive conflicts between article 1 and article 3. The treaty gives a very wide discretion to the very discretionary tribunal.

The Bill has a major loophole. What happens if the tribunal makes a recommendation other than to return the land, such as creating a right of way? It seems to me that that is not covered in the State-Owned Enterprises Act, neither is it covered in the Bill. The wahi tapu---objects sacred to the Maori people---could involve hundreds of millions of dollars. The Minister has a very wide

discretion with those assets. It could involve a mountain range---a mountain---or extremely valuable land. A more weighty tribunal, rather than just the Minister, is required to make decisions on those assets.

Rt. Hon. GEOFFREY PALMER (Minister of Justice): I thank members who have taken part in the debate, which has been one of the better debates in the House because members have tried to discuss the issues seriously. The member for Clevedon, in his contribution, referred to apprehension. The only apprehension that can stem from the Bill would be in the minds of those who do not understand it. I hope he is not one of those. To say, as he did, that the Bill involved panic, is wrong as it took 6 months of the most meticulous work and negotiation and was scrutinised repeatedly before its introduction into the House.

The Bill is unique, as there has never been such a Bill in the history of Parliament. It is extraordinary. The member for Marlborough asked whether the select committee would be able to make changes to the Bill. The select committee would be able to do so, but those changes will have to be more seriously and deeply considered than changes in a normal Bill, because, as the extraordinary recitals show, the Bill, unlike any other Bill in my memory, has been introduced to settle a case in the Court of Appeal. It is the result of an agreement. The case is unusual, and that fact needs to be taken into account. No doubt all Bills are capable of improvement, and no doubt the select committee will be able to make a contribution to that.

Several speakers mentioned third-party rights. The issue before the tribunal is whether one of the treaty partners---namely, the Crown---has lived up to its obligations under the treaty in relation to the land. That is not an issue in which third parties have a direct interest. Obviously, when they take the land, subject to notice, they know that that possibility may exist, because it is endorsed on the title. However, the matter of whether the Crown met its obligations is one of great importance, and the hearing of it will not be improved by the intervention of third parties, which will not be arguing about those obligations but about their personal interests---a different point altogether. The member for Remuera said that the tribunal was biased and that it did not follow the rules of evidence.

Mr Graham: I didn't say that.

Rt. Hon. GEOFFREY PALMER: I apologise to the member if he did not say that, but my notes suggest that he did. However, he said that the tribunal was not obliged to follow the rules of evidence. Most tribunals are not obliged to follow the rules of evidence. However, whether or not the rules of evidence are followed is not material for the resolution of a dispute that depends on what happened a long time ago and whether or not breaches occurred. Whether evidence is admissible or inadmissible does not mean that, in the event of its being admitted, any weight is given to it. In most disputes of this nature it is a question of analysing the facts and deciding what weight they should bear. The conduct of tribunals is not like the conduct of criminal trials in which a person's conduct is in issue. That is an important distinction. Most tribunals are not bound by the rules of evidence in the way that courts are.

Bill introduced and read a first time.

Rt. Hon. GEOFFREY PALMER (Minister of Justice): I move, That the

Bill be referred to a committee consisting of seven members. The members of the committee are to be Mr Dillon, Dr Gregory, Mr Warren Kyd, Mr McLean, Mr Mallard, Mr Peters, and the Hon. Mrs Tirikatene-Sullivan.

Motion agreed to.

**5 May 1998, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 488, pp3970-3982**  
**Treaty of Waitangi (State Enterprises) Bill** (Report of Committee on Bill)

TREATY OF WAITANGI (STATE ENTERPRISES) BILL

Report of Committee on Bill

Dr GREGORY (Northern Maori): I am directed to report that the Committee on the Treaty of Waitangi (State Enterprises) Bill has carefully considered the Bill and recommends that it be allowed to proceed as amended. I move, That the report do lie upon the table.

E te wharehau me nga mema o te komiti o tenei pire tena koutou katoa.

The Treaty of Waitangi (State Enterprises) Bill was referred to the committee on 8 December. Submissions were called for, with a closing date of 29 January. In total, 51 submissions were received. Of those submissions, 7 were from State-owned enterprises; 11 were from Maori organisations---mainly trusts and other groups; 2 were from private enterprises; 26 were from individuals; and 5 were from other organisations. Oral evidence was heard by the committee during nine meetings held formally in Wellington. The committee also met in Auckland and at the Owai marae, Waitara, in Taranaki, this year. About 26 hours of evidence was heard in total. Consideration and deliberation on the Bill covered two meetings, and during the consideration the committee was assisted by a technical advisory group of representatives from various departments, mainly Treasury, the Prime Minister's Department, the Department of Justice, the Department of Maori Affairs, and the Crown Law Office.

The principal object of the Bill is to give effect to an agreement entered into between the New Zealand Maori Council and Sir Graham Stanley Latimer, and the Crown, in settlement of an application for judicial review made by the New Zealand Maori Council and Sir Graham Latimer. Essentially the Bill puts into place a system of safeguards for Maori claimants to apply after the transfer of assets to State-owned enterprises. It is important for the House to understand that point. In that regard the Bill amends three existing Acts---namely, the Treaty of Waitangi Act, the State-Owned Enterprises Act, and the Legal Aid Act.

Submissions received by the committee raised a range of issues, with several particular issues recurring as matters of concern. I shall briefly summarise those particular issues to the House: first, the absence of a right for persons other than the claimant, any other Maori, or a Minister of the Crown to be heard as a party by the tribunal; second, the lack of appeal rights from a tribunal decision; third, the possibility of imposing a time limit on the lodging of claims before the tribunal; fourth, the adequacy of compensation for those whose land is resumed by the Crown; and, finally, clarification of the interests in land that are affected by the Bill. The committee carefully considered the general issues raised in written submissions and the presentation of oral evidence, and has recommended amendments to the Bill as it considered appropriate.

Part I amends the Treaty of Waitangi Act 1975 by inserting the proposed new sections 8A to 8I. The proposed new sections 8A and 8B in clause 4 relate to recommendations in respect of land transferred to, or vested in, State enterprises when a claim has been submitted under section 6 of the Act; the proposed new section 8C deals with persons entitled to be heard in the course of any inquiry into a claim submitted to the tribunal, while the proposed new section 8D confers on the tribunal special power to recommend that the land be



no longer liable to resumption; the proposed new section 8E provides for the issue of a certificate to the effect that land will no longer be resumed; the proposed new section 8F allows for the tribunal to receive information as may be necessary for it to decide which persons would be adversely affected by a non-resumption application; the proposed new section 8G provides for the issue of public notices detailing applications; the proposed new section 8H allows for the serving of tribunal decisions; and the proposed new section 8I provides for the preparation of an annual report to the House of Representatives on the progress being made in the implementation of tribunal decisions.

The proposed new sections received considerable attention; 23 of the submissions received specifically concerned their implication. Comment was made on the binding of the tribunal recommendations; the grounds on which the tribunal would decide on the validity of a claim; the matter of land improvements; the position of those with an interest in land---for example, a registered lessee; the right to be heard by the tribunal, and appeals; and the discretionary power of the tribunal to recommend that land be no longer subject to resumption. The committee has considered the issues raised in the submissions and has recommended amendments as it considered appropriate, having regard to the principal objective of the Bill and its intent.

Part II amends the State-Owned Enterprises Act 1986 by repealing section 27 and adding the proposed new sections 27A to 27D. The proposed new sections relate to the resumption of land by the Crown to be effected by the Public Works Act 1981 and, in particular, the resumption of land that is wahi tapu. As with the proposed new sections 8A to 8I, the proposed new sections 27A to 27D attracted considerable comment from those making submissions. Issues raised by the submissions included the mechanisms to be employed in identifying wahi tapu; the restrictions on possible development of the land and the use of improvements on that land; the position of leaseholders; compensation for wahi tapu land resumed; and the cost involved. The committee has proposed amendments in clarification of the issues raised.

I draw the attention of the House to one or two further matters in relation to certain publications in some of the main papers in New Zealand. As an example, I shall take the fear expressed by one or two Opposition members in relation to privately owned land. The Leader of the Opposition, in his pronouncements on the topic, gave rise to a fear that the Bill had that intention. I make it clear that that is not the position. As I mentioned earlier, and I reiterate now, the Bill applies only to land being passed from Crown ownership to State enterprises when Maori people feel that it may in actual fact be in rejection or opposition to the Treaty of Waitangi and all that it stands for.

It is important to make known to the owners of privately owned land that the Bill does not have the intent of seeing them lose their land. I mention that particular comment because it was expressed loudly and clearly by Opposition members when the Bill was before the committee.

In the committee's travels around New Zealand it did meet with some difficulties---particularly in Auckland with Maori people who were attempting to upstage the proceedings of the committee. The chairman finally had to close the meeting because of the unruly behaviour shown by those individuals. I am sure that the other committee members would confirm the behaviour that took place on that occasion. The committee also met on the Owai marae in Waitara, and the hearing was attended at short notice by a very large gathering of people. They expressed their concerns on land issues, especially in

relation to Taranaki, and they were listened to with keen interest because the whole matter of Maori land was relevant.

WINSTON PETERS (Tauranga): I am extremely concerned to learn that the Minister of Maori Affairs will not contribute to the debate today. It has been my contention for several months that the Minister is no longer in charge of his department, and every day, in the House and outside it, we see evidence to suggest that I am right. The Opposition will oppose the Bill and its reporting back. I shall set out some very cogent reasons that that should be so---not just for the Opposition but also for Government back-bench members. The Minister of Justice, who is the Attorney-General and a paragon of constitutional virtue, would be wise to listen to what has happened in relation to the select committee, because I had effrontery, insult, and abuse heaped on me---as did all of my colleagues---by the Government with respect to the proper role of a select committee and examination of the proposed legislation. The committee was asked to rubber-stamp a deal made outside the House---a deal occasioned by tremendous embarrassment to the Government because the Minister of Justice---the Attorney-General---and his colleagues sought to ignore in December 1986 a very wise amendment moved by the Opposition that would have obviated the need for an injunction at court in March 1987.

Hon. Philip Woollaston: I know of no such thing.

WINSTON PETERS: The member knows of no such thing? Well, they say that ignorance is bliss and that they obey best who know the least.

Mr McKinnon: He ended up voting for our party.

WINSTON PETERS: That is right. That decision by the Government led in 1987 to a massive injunction at the Appeal Court, from which an agreement was reached that matured into the Bill before the House. Never in the country's parliamentary history has a Bill been referred to outside parties first, attached to an agreement, and then sent along to Parliament and the select committee for rubber-stamping. That is constitutionally disgraceful, and the paragon of constitutional virtue who wrote a book called *Unbridled Power*---not once but twice; the second edition without a question mark behind it---should apologise in the House. Never has a select committee or Parliament been treated in such cavalier fashion. That is the kind of autocratic and despotic behaviour from which parliaments and peoples in the free world, over generations, have sought to escape. That is what the committee is being asked to do today, and the Opposition will oppose the reporting back of the Bill because Parliament should not be bypassed; it should not be irrelevant, and the select committee should not be irrelevant, in the history of the country's political affairs.

Chief Parliamentary Counsel, Mr Iles, told the committee on 3 May that the Bill was appended to the agreement that was sent to the Maori Council and Government members when that decision was made after the Appeal Court decision. Committee members asked whether any changes had been made, and he said, ``only with respect to print errors''. I quote him: ``essentially, exactly the same document''. Parliament needs an explanation, because that is the first time it has heard that; it was the first time the committee knew that it was being asked to rubber-stamp a decision made outside Parliament. It was very clear to Opposition members that, no matter what any party around the country might suggest, Government members would not change the Bill at all---in any way, shape, or form. But they had the effrontery to send along to the select committee---and they almost got away with it---a group called the technical advisory group on the Treaty of Waitangi (State Enterprises) Bill. No such group existed 10 months ago. That group was sent down---

Dr Gregory: That's when it was established.

WINSTON PETERS: If there was no Bill then, how could those people call themselves an advisory group on the Treaty of Waitangi (State Enterprises) Bill? It is a matter of logic and chronological sequence, which even the member for Northern Maori should be able to follow. Those people posed as officials from various departments when in fact they were not. They were a group that contained a chairperson who belonged to the Prime Minister's Department. The select committee is entitled to know what the Department of Justice thinks, and what the Department of Maori Affairs thinks. What is the advice of officials---untrammelled and without duress?

Dr Gregory: We did get it.

WINSTON PETERS: We did not. Let the member name one official who gave it. All is silence. The member's silence is deafening, is it not? There is not a word! What is worse, there is not a name. That is what Government members are trying to do to the select committee, and they will not succeed. The Opposition will not allow the Government to set up its own group of officials to come to the select committee. I asked the group: ``Does your submission represent the views of your department?'' The answer was that it did. I asked what circulation took place in that department---and those people could not answer. The group was just a Labour Party, socialist, despotic Trojan horse wheeled in to the select committee, attempting to pretend to be something that it was not. Parliament and the select committee---particularly not the Maori Affairs Committee, which made up most of the special committee---should not be treated in that way. The definitions in the Bill are vague---and so stated some of the submissions. There was a great degree of dissension about the Bill, and I wish that the member for Northern Maori had explained what happened at the Hyatt Kingsgate Hotel when the committee went there on 23 February.

Dr Gregory: I did.

WINSTON PETERS: Perhaps the member could tell me why he sat there and heard a submission containing an expletive and did not rule it out of order. That is contempt. What is more contemptuous is that when a woman called Hilda Phillips---and not everybody agrees with her views---made a submission she was subjected to verbal abuse of the worst kind. That is not good enough.

Dr Gregory: Rubbish!

WINSTON PETERS: She was subjected to abuse, and that is not good enough. New Zealanders do not know the amount of compensation that they will be required to pay under the legislation. Members could not tell the committee that, nor could the representatives of State-owned enterprises who came before the select committee---yet the Government has already done a deal to the tune of \$6.2 billion in relation to the assets of the Electricity Corporation, although the corporation stated that the Treasury valuation was between \$11 billion and \$14 billion. How the parties could do that deal I would not know, but it has been done without knowledge of what the Maori claims might be that could validly be brought before the tribunal in time.

The matter of status is not dealt with by the Bill, and the submissions said so. There is no right of appeal, and submissions on that matter were presented to the select committee. Why is it that the tribunal will have the power to make a decision, and, unlike the position with any other court, nobody can appeal against it? It is a decision of a tribunal with less status than the High Court, yet nobody can appeal against it.

This is not a Maori or a European issue. It is a New Zealand issue. Most people in this country are entitled to have a proper system of law, and this simply will not do. There will be a tremendous delay in the hearings, and there will be much strife among

the people, if the Bill proceeds in its present form.

I close on the point I started with. Why will the Minister of Maori Affairs not speak today? Why has the Minister of Justice treated Parliament, and the select committee in particular, in such a cavalier and despicable fashion? That was the kind of behaviour he used to rant and rave about in the old days, when he went up and down the country boring the Rotary clubs with his speeches about constitutional purity. However, I have not seen a man drop his principles so fast when it came to constitutional requirements, the nature of which most members of Parliament support. But, worse still, Government members of the select committee cannot go on rubber-stamping what the Executive says. They will be culpable in time. When the crunch comes, they will not be excused because they did not have executive office. They had the power to vote and to stop the procedure, but they did nothing---and that has been the case thus far. No select committee in my time---or, I think, in the time of any other member of the House---has been so badly treated.

Rt. Hon. GEOFFREY PALMER (Minister of Justice): The speech made by the member for Tauranga was the speech of a member who sat on the select committee and who heard the evidence. A more incoherent rambling from that member I have not heard. He said that the Opposition would oppose the Bill. He said that he would advance reasons for that opposition. When his reasons for opposing it are analysed we find that they evaporated in vituperation and abuse that lacked substance. If the member had concentrated on doing his homework instead of posturing, he could very easily have answered all of his own questions. If he could have recalled, for example, the time that the Bill was introduced to the House, he would know that what was said was that the Bill was the result of an agreement between the Government and the New Zealand Maori Council. I said when introducing the Bill: ``The task of achieving agreement between the Government and the New Zealand Maori Council has not been an easy one. The Government for its part was determined...to resolve these matters in a spirit of co-operation.''

Winston Peters: I raise a point of order, Mr Speaker. I know that the Minister was not a member of the select committee, nor did he attend any select committee hearings, but, in accordance with the Standing Orders, he should not be allowed to start a recitation of previous debates in the House. He is talking about the introductory speech he gave when he introduced the Bill. That cannot be right. This is a debate on the reporting back.

Rt. Hon. GEOFFREY PALMER: In speaking to the point of order, I point out that one may refer to debate on previous stages of a Bill. That is abundantly clear. I am engaged in refuting points made by the member. If he does not like the recitation he can leave the House, but I am certainly entitled to make it.

Mr SPEAKER: I understand that the Minister is entitled to refute arguments advanced earlier. The rulings on the matter sustain the Minister's right to respond.

Rt. Hon. GEOFFREY PALMER: At that time I said that the task of achieving agreement between the Government and the New Zealand Maori Council had not been an easy one, but that the New Zealand Maori Council was to be congratulated on the way it had reciprocated the commitment on behalf of the Maori people as treaty partners. I said that the Bill before us was testimony to what could be achieved by both parties when issues---

Winston Peters: I raise a point of order, Mr Speaker. Rebuttal is one thing, but the Minister is now repeating what he said during the introduction debate. I contend that, according to the Standing Orders and to previous Speakers' rulings, he should be required to speak on

the reporting back and what happened at the select committee, but not repeat what he said when the Bill was introduced. The debate is narrow in that sense.

Trevor Mallard: There are two things that members are not allowed to do. One is to talk about debates on other matters previously dealt with during the session. The second is to report on outside comment on a Bill that is before the House. The Minister is doing neither of those things, and is therefore allowed to continue. A Minister could read the same speech three times if he wanted to.

Rt. Hon. GEOFFREY PALMER: The point I am trying to make is---  
Mr SPEAKER: Order!

Rt. Hon. GEOFFREY PALMER: I am sorry. Are we still on the point of order? There is no point of order. It is a fatuous attempt to interrupt my speech.

Mr SPEAKER: Order! The Chair will decide that.

Hon. W. F. Birch: There is a legitimate point of order, Mr Speaker. You have ruled in the past few days that the appropriate time to refer to matters that took place in a select committee is at the reporting back of the Bill. That is the purpose of the debate. Speakers' rulings down through the ages direct that the reporting back of a Bill from a select committee is a debate on what took place in that committee and on the views of its members. It is not appropriate for the Minister to debate more widely than that, or to debate the principles of the Bill and other such aspects.

Mr SPEAKER: Order! Members of the House may debate the Bill as it is reported back from the select committee. They may debate the merits of the Bill. The debate is not simply a recitation of the evidence and the examination and cross-examination that went on at the committee. Members who were not on the committee are certainly entitled to debate the Bill as reported back. They are allowed to rebut arguments used in the consideration of the Bill earlier in the debate and before it went to the committee. I do not think that the Minister is out of order at this stage. He is able to talk about the Bill as it has emerged from the committee, and about the arguments behind the inclusion or exclusion of elements of it.

Rt. Hon. GEOFFREY PALMER: Every point made by the member for Tauranga in his contribution to the debate was in error. He said, first, that Parliament is being bypassed by the Bill. The error of that statement is to be found in the fact that when the Bill was introduced it was said to be as a result of an agreement between the New Zealand Maori Council and the Government. Parliament is not being bypassed. The Bill was introduced in accordance with the Standing Orders. It was sent to a select committee. Submissions were heard at the select committee, and I have before me a slip of amendments of about 13 or 14 pages in length that were drafted by parliamentary counsel, and that apparently were made by the committee. If Parliament were being bypassed there would be no capacity to alter the Bill in any respect. It has in fact been substantially altered by the select committee, and the argument that is being made by the member for Tauranga is completely and utterly wrong, and is misleading.

He then said that the Government is guilty of despotic behaviour in relation to the Bill. How can that be so when the Government introduced the Bill, sent it to a select committee for months and months, and asked for submissions on it? Then the Bill was altered while at the select committee. The member for Tauranga put on a disgraceful display at the select committee. He is so ignorant of Government procedures that he does not realise that the Bill was produced without a department. He does not understand that the Government does not have a department to deal with the Treaty of Waitangi, and because of that lack it was necessary to set up a

special advisory committee of officials to advise the Government on the issue. They came from several departments---the Department of Justice, the Prime Minister's office, the Land Corporation, and from a variety of places within the Government---to give adequate advice. For the member to say that other departments should go to the select committee, and for him to refuse to listen to the advice tendered by the officials, is an insult to those officials. His behaviour at the select committee was disgraceful. It showed what an ignorant member he is if he does not understand---

Winston Peters: I raise a point of order, Mr Speaker. The Minister has good cause to be excited, but he cannot start referring to select committee behaviour in the way that he did---particularly when he is lying. He can laugh, but he is lying. The chairman did not---

Mr SPEAKER: Order! The member will resume his seat. It is perfectly in order for any member to report on the occurrences that took place at the select committee. If the member wants to rebut the claim, that, of course, is part of the debate, and he has other ways of redress, just as he or his colleagues can address the content of other speeches on the reporting back from the committee if they are wrong. It is certainly in order to tell the House what occurred at the committee.

Trevor Mallard: I raise a point of order, Mr Speaker. You did not deal with the method of the point of order and the words used by the member. I ask that the words be withdrawn and that the member apologise.

Mr SPEAKER: Thank you. The member for Tauranga made the accusation that the Minister was lying. He should withdraw.

Winston Peters: I withdraw and apologise.

Rt. Hon. GEOFFREY PALMER: The conduct of the member in the select committee was not only ignorant but was also disgraceful, because the officials involved reported to me and sought my advice about what they should do. The member does not appreciate that no department of State was involved as the official adviser on the Bill. I introduced the Bill, and no department was seized of it---

Winston Peters: Why?

Rt. Hon. GEOFFREY PALMER: It was because treaty issues are not dealt with in that way. The member can prattle on as much as he likes.

Mr McLEAN (Tarawera): The Minister of Justice did not tell the House that the officials were led by a woman from the Beehive, not from the department. She was from the Prime Minister's clique---from his gang up there---and she was not independent.

Trevor Mallard: Tell the truth.

Mr McLEAN: She came from the Prime Minister's clique.

Mr SPEAKER: Order! I shall raise the matter of the interjection made by the member for Hamilton West. I ask him to withdraw his allegation.

Trevor Mallard: I withdraw the allegation, but I want to make the point that the woman came from the Ministry for the Environment.

Mr SPEAKER: Order! I do not need to have any qualification of a withdrawal. This is a debate. If members want to rebut points that are being made by other members, they should use the debate, and not the point of order device.

Mr McLEAN: The woman, competent on the surface and probably a very effective person, came from the Prime Minister's office.

Trevor Mallard: Rubbish!

Mr McLEAN: She was originally from the Ministry for the Environment. The member for Hamilton West does not even know what happened at the committee---and there may soon be a letter to you, sir, on another subject about the member. In a narrow sense the Bill

deals simply with Crown land being sold to State-owned enterprises. However, the evidence presented to the select committee showed that the Bill has much more significance for Maori people. The Bill arises from a Court of Appeal decision that the Government fought every inch of the way, yet the Court of Appeal stated that the Government should back off and give the Maori people a fair go. As a result, the Bill was drafted and it has raised the expectations of Maori people from one end of the country to the other. Such high expectations were indicated clearly in the evidence presented to the select committee.

Maori people view the Bill as a chance to resolve and to reopen their land claims, and to resolve all of the economic and social problems of young Maori people. Of course, the Bill will not do that. Those high expectations are doomed to failure. The Bill has brought considerable fear of land loss to pakeha people. Those fears are not only as a result of the Bill but they stem from the Government's wobbly-kneed approach to illegal occupation of private land by radicals. The Bill represents a clash between pakeha fears and Maori expectations. The Maori land claims have to be settled fairly and finally. The Bill does not do that. The claims must be settled fairly between claimants and taxpayers. They must be settled finally, because New Zealanders cannot spend the next century rehashing the injustices of the past century. The injustices must be resolved quickly and fairly.

Reference was made to the select committee hearings in Auckland. At those hearings a Mr Syd Jackson presented a submission containing obscene language. He accused the committee of being racist. He submitted that his objective was to gain control of New Zealand, not only of the land, but also of the Government. I asked Mr Jackson whether he was a Maori, because he is not wholly Maori. I asked him whether he could recite his whakapapa, his genealogy---not to do so, because that would not have been appropriate. He declined to answer the question. He went before the committee as a representative of the Maori people, yet he was unable to establish his credentials.

I asked him where ``Jackson'' came into the whakapapa, because, clearly, Syd Jackson, like most of the people who gave evidence, is neither wholly Maori nor wholly pakeha. He has something from both traditions, and I only wish he had something of the best of both traditions. He has not. The chairman of the select committee meeting in Auckland totally lost control. When I had finished cross-examining Mr Jackson, a woman member of his party spoke out of order and out of time, and she kept on speaking. The committee chairman did not have the force of personality or the mana to ask the woman to sit down. Instead of adjourning the meeting, he closed it. He was a weak and incompetent chairman.

NOEL SCOTT (Tongariro): It is a sad reflection on the House and on the Bill's importance that members have been treated to a short and hysterical outburst by the Opposition. I am really appalled that such an attitude should be taken. I should like to say at the outset of my contribution to the debate that the select committee was established for a special purpose. It was for that reason that a group of officials was required to join together. The attempt to discredit the chairwoman of that group of officials because she happened to work in the Prime Minister's Department is unacceptable, and even disgraceful. It is necessary, right at the outset, to be absolutely clear about the Bill's basic purpose, and that is to legislate, as was virtually required by the Court of Appeal, for a workable outcome to the agreement entered into by the New Zealand Maori Council and the Crown in settlement of an application for judicial review by that council and its chairman. The two parties involved in the treaty and the legislation are the Crown and the Maori people. It is necessary

to keep that point clear when the rights of other parties are heard, or when part of the matter is questioned.

I should like to indicate at this stage that, notwithstanding sensible statements made by politicians---and some of them make statements that sound terrible, such as those of the member for Tarawera---some statements are in danger of raising Maori expectations. The member for Tauranga should have known better when he asked why---since we are all New Zealanders---we should indulge in that kind of stuff. The other argument he raised was that we must not, as a Government and as a nation, practise policies that equate with patronising white liberalism. All of those arguments have an element of justification. However, it is a central and inviolate fact of our times---as portrayed in the Bill---that the period from 1840 to 1988 has involved injustice and much alienation of Maori land. That has become not only fact but also legal decision, with the Court of Appeal declaration on 29 June 1987. That declaration states that it is unlawful to transfer assets to State-owned enterprises without a system to consider and decide whether such transfers were consistent with principles of the Treaty of Waitangi.

How on earth could the Opposition come out in opposition to that decision? A requirement and a process recognising that the Treaty of Waitangi is a full and binding agreement will now be established, at least in terms of the transfer of Crown land to State-owned enterprises. The Bill applies only to land that the Crown owns, and wants to transfer to State-owned enterprises. There was much confusion about that issue during the hearings, perhaps most of all from several iwi authority who were not certain about the point. The Bill in no way contains the possibility that privately owned land or property can become subject to it, although the news media and the member for Clevedon made attempts to convince people that it could. The Bill is vital to the harmonious, peaceful, and equitable future development of New Zealand as a nation. Anyone who had any doubt about that should have come to the select committee. It is unfortunate that very few people came to the Owai marae at Waitara in Taranaki. On that day there were feelings of injustice at the outcome---

Mr DEPUTY SPEAKER: Order! I am sorry to interrupt the honourable member, but the time allotted to him has expired.

WARREN KYD (Clevedon): The Minister of Justice criticised the member for Tauranga. It should be recorded that the Minister of Justice did not attend any meetings of the select committee and has no personal knowledge about what went on at the committee.

Trevor Mallard: And Peters hardly ever got there on time.

Hon. W. F. Birch: I raise a point of order, Mr Deputy Speaker. I am sure that you heard the interjection made by the member for Hamilton West. He referred to an honourable member in a way that was out of order and provocative.

Trevor Mallard: I apologise. It was the member for Tauranga who was late.

WARREN KYD: The behaviour of the member for Tauranga was never disgraceful. It was perceptive, diligent, and searching. He was right to question the technical committee, because clearly it was made up of Crown and Treasury officials, with inadequate representation from the Department of Maori Affairs. The committee was advising on policy matters not technical matters. In relation to the visit to Owai marae, 1 day's notice was given to the Maori people in the area. Very few of those who wanted to turn up had the opportunity to do so. They were incensed and angry. It is no wonder that there was dissent at that meeting. The Auckland meeting was supposed to be a marae meeting, but it was held in a gilt room in the Hyatt Kingsgate Hotel,



and there was grossly insufficient room. Not everyone could get in or find a seat. The Maori people present were extremely angry, and made that clear. Poor management by the chairman caused that meeting to go wrong.

The Bill is important and remarkable. It gives a tribunal the power to review 150 years of history, and to overturn it if it seems right to do so. It has the power to rewrite history. It was important that the Bill should be 100 percent correct. It was important that the rights of the individual should be protected; that there should be equity between Maori, pakeha, the State-owned enterprises, and the Crown. The Bill has not achieved that goal. The State-Owned Enterprises Act was passed without adequate consultation with the Maori people. Maori rights were not given protection, yet in the House the Minister of Justice said that the Maori people were adequately protected. Because the Minister did not protect the Maori people they were compelled to go to the Maori Council and bring proceedings in the High Court and the Court of Appeal. The people of New Zealand should know that the Minister of Justice and the Government opposed the Maori Council in the High Court and the Court of Appeal.

The Bill is shot-gun legislation into which the Government has been forced, and it has created an adversarial element in the Act that will cause great harm and great difficulty. The Bill has the capacity to deal with assets worth billions of dollars---for example, assets of the Electricity Corporation worth \$6 billion. When assets and property of such dimensions are affected there should be a right of appeal, but there is none. That position is inconsistent with the Treaty of Waitangi, which guarantees the Maori people full protection as British subjects. The fact that they have not been given right of appeal is of supreme importance and indicates a lack of concern for their rights. There will be disputes between Maori people. Already there have been disputes between hapu and iwi and between iwi and iwi. The State-owned enterprises could have assets worth billions of dollars confiscated from them, yet have no right of representation before the Waitangi Tribunal. One would have thought that the principle of no confiscation without representation would apply, but it does not.

Many other groups could be affected. For instance, Tasman Pulp and Paper Co. has an interest in some of the Forestry Corporation lands, which could revert back to the Maori people without there being a right of representation. Farm lands could be affected. Federated Farmers do not have right of representation. Individuals could be affected, and could have special knowledge. They do not have right of representation. Furthermore, the words of the Treaty of Waitangi Act are vague. The tribunal has to decide whether something is inconsistent with the treaty.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): I shall correct the member who has just resumed his seat. The people who met at Owai marae in Taranaki were originally invited to participate with two other Maori trust boards in making submissions in the Maori Affairs committee room. I arranged that meeting on behalf of the Taranaki people, who are my constituents, and I also arranged the meeting at Owai marae on behalf of the Taranaki people, although the marae is in the Western Maori electorate. It is misleading to say that they had 1 day's notice, because they were not able to comply with the original arrangements I made with the chairman of the select committee for them to come before it. Although in the end the meeting was held at short notice, I know that they were gratified to be visited by members of the committee. I regret that I was not able to be present on that day, although I had made the arrangements. Members will recall that at that time we experienced a cyclone. On that day I

was with my Wairoa constituents, considering what might be done to compensate those people whose property was damaged. In the end, I unexpectedly was unable to be at the meeting on the day, but the people were grateful to have the opportunity to appear before the select committee.

I shall refer to the meeting at the Auckland hotel. The committee was requested to visit Auckland. It was not requested to visit a marae, but it would have been good if such arrangements had been made and such an invitation had been given. However, I believe that the chairman of the committee went to the extent of arranging for the committee to go to Auckland. There was rancour on the part of those people who appeared before the committee, particularly Syd Jackson. While listening to him I made my own observation that I doubted whether he had studied the Bill, as his submissions did not directly relate to it. They were certainly an emotional response to many issues, but they did not relate in any specific way to the Bill.

I am particularly pleased to speak on the Bill, because I was one of the two Ministers involved in the original Treaty of Waitangi Bill. The section 9 that was eventually put into the State-Owned Enterprises Act 1986 carried the identical words used when we worked out the original Bill, and I was pleased to see that that section was included. I believe that it is not unreasonable for me to accept with some authority that I might have initiated much of the discussion in Maoridom that resulted in section 9. Were it not for section 9 being put into the original State-Owned Enterprises Act 1986 by the Government, the New Zealand Maori Council would not have had a successful case. Victory hung on that clause, with which I have been very familiar for many years, and I included it in a private member's Bill of my own. Nothing in the legislation permits the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi. The words in the clause go back to what was called a Ratana/Labour alliance, so I have a particular and specific awareness of it. The Government provided that clause so that the claim of the New Zealand Maori Council could succeed.

There is so much that one could say on the Bill as reported back. The Maori people who made submissions were in agreement with the Bill. They made suggestions and there were nuances of improvements, but they were in favour of the Bill, and they applauded what the Government was doing. Justice delayed is justice denied, and after years of a National Government a measure has been introduced that recognises---although related to a specific and recent Bill---the principle that was established in 1928, as made clear by papers and documents I have. Maori trust boards made thoughtful suggestions in relation to the Bill. I refer in particular to the approval of the Bill by the Tainui Trust Board and its suggestions about it.

Mr R. F. H. MAXWELL (Taranaki): The importance of the Bill cannot be underestimated. The record should be put straight, because the history of the Bill goes back to a claim made principally by Taranaki Maori tribes, which successfully challenged the claim made by the Minister of Justice in relation to the status of land as a result of State-owned enterprise legislation. The court challenge was successful, although it was keenly contested by the Crown---under the Minister's direction, no doubt. The result is agreement in the form of the Bill before the House. The Minister of Justice has egg all over his face as a result of the circumstances of this Bill. He should feel a little concern about it, because it puts into jeopardy all of the other assurances that he has given in the House.

The organisation of the select committee hearing that was held at the Manukorihi marae in Taranaki was a disgrace. The member who has just spoken might say that Nga Iwi O Taranaki were grateful for the

opportunity to appear at the select committee hearings. Anyone is grateful for small mercies. If they had not gone to the meeting they would not have had a chance to put their case. On behalf of my colleagues in the House, I apologise for the way in which Nga Iwi O Taranaki were treated at the hearings. I believe that the mana of Nga Iwi O Taranaki was slighted, and that they were treated with arrogant disregard, because they were given very short notice of the hearing. Some of the people had heard of the meeting within hours of turning up at it at midday. The importance of that lack of notice cannot be overstated. The Taranaki people made the claim that brought about the Bill in the first place. I would have thought that it would be in the Government's interest to make sure that they were one of the first groups to have a chance to analyse the Bill and to make submissions on it. I highlight the importance of the select committee hearing, because it seems that the short notice given may have included an element of contrivance.

Several claims have been lodged with the Waitangi Tribunal on behalf of Maori residents of Taranaki. Some of those claims have been lodged by Taranaki people who live outside the region, and that has created some difference of view among Taranaki Maori people. At present, Taranaki residents who are Maori refer to themselves as Taranaki Maori, as opposed to Maori people who live outside the area. They say that the whole procedure was a jack-up. Sir Ralph Love and Ngatata Love, who are members of the latter group, made submissions at the meeting, and there was concern that other Maori people did not get a chance to get their material together. I acknowledge that if local Maori people had had time to place submissions before the select committee, they might well have made similar submissions on the background and detail of the Bill, but the feeling is that they were hijacked by the submission that was made.

The select committee, which received one submission, may have been led to believe that that submission expressed the view of all Taranaki people. The real concern is that the arrangement that is the basis of the legislation agreed upon by the Crown and the New Zealand Maori Council does not represent the views of the iwi, hapu, and whanau of the Taranaki area. That concern is highlighted by the fact that different submissions have been made to the Waitangi Tribunal. This is an important matter that ought to be presented to the various tribal groups so that they can make their submissions without being hijacked by a last-minute meeting such as that that has brought the select committee process into disrepute and disfranchised many of the Maori people who live in Taranaki. There was concern that any settlement might take the settlement outside Taranaki. The concern in Taranaki is that the Government did not do justice to the Taranaki people.

BILL DILLON (Hamilton East): After listening to the previous speaker, I realise that it is fortunate that he was not on the select committee that listened to the matter.

Mr R. F. H. Maxwell: I raise a point of order, Mr Acting Speaker. I was a member of the select committee that attended the meeting at the Manukorihi marae in Waitara, and from that point of view the member is misleading the House.

The ACTING SPEAKER (Mr T. J. Young): Order! That is not a point of order on which I can rule. If the member has been misrepresented, or wants to correct a statement made in the House when he no longer has the right to speak, there is an appropriate Standing Order to which he can draw my attention when the member who has the floor has finished his speech.

BILL DILLON: The Bill has its genesis in the Court of Appeal decision, which primarily dealt with the claim by the Maori people

that there should not be State-owned enterprises. On the other hand, the Crown claimed that there should be State-owned enterprises. The decision of the Court of Appeal was that there should be State-owned enterprises, but that protection of the rights of Maori people was needed. The Bill is the outcome of that decision, and of the agreement that was reached that was presented to the House when the Bill was introduced. One of the aspects that was highlighted at the time the Bill was introduced was that it came into effect on the day it was introduced in the House. At the first meeting of the select committee, before it was formally called to adjudicate on submissions, I was at great pains to point out to the members of the select committee the unusual nature of the Bill---that it was an agreement, and that it came into force on 9 or 10 December---whichever day it was introduced. That meeting took place in room 5 of the Ayes lobby.

I congratulate the press on its coverage of the Bill. On this occasion---unlike other occasions---it has been responsible in its presentation of the matter to the country. Apart from the hiccup involving the Auckland meeting at the Hyatt Kingsgate Hotel, and I suspect it may have been orchestrated by Opposition members---

Winston Peters: I raise a point of order, Mr Acting Speaker. It is outrageous for the member for Hamilton East to suggest that behaviour at a select committee in Auckland was orchestrated by Opposition members.

Hon. Mike Moore: It's a debating point.

Winston Peters: It is not a debating point. It is not within the Standing Orders, and it has no relationship to the debate or what went on at the select committee. The allegation will not be sustained by Opposition members. We want an apology.

Rt. Hon. Geoffrey Palmer: The member for Hamilton East was interpreting what happened at a select committee, and that is precisely the purpose of the reporting back of a Bill. This is the fourth time the member for Tauranga has interrupted the debate by raising points of order that are without merit. That technique for interrupting the speeches of members deserves the attention of the Chair.

The ACTING SPEAKER (Mr T. J. Young): I was not in the chair at the time those points of order were raised, but I do not like spurious points of order being raised. I shall not classify that remark in any way, at present. It is correct that I do not have the power to intervene, because it is not a point of order and there is nothing on which I can rule. It is a matter for debate.

BILL DILLON: The only photograph that appeared in a newspaper as a result of the meeting in Auckland was a photograph of the member for Tauranga meeting---and grinning with---the extremists who had broken up the meeting.

Mr R. F. H. MAXWELL (Taranaki): I raise a point of order, Mr Acting Speaker, under Standing Order 171 and Standing Order 172.

Jack Elder: Which one?

Mr R. F. H. MAXWELL: I understand that I can raise the point of order under both of those Standing Orders. The member for Hamilton East has misrepresented my involvement in the select committee process, and I want to put the record straight.

The ACTING SPEAKER (Mr T. J. Young): Does the member want to make a personal explanation under Standing Order 171, or is he raising his point of order in relation to a misquotation of words used in debate? If the member wants to make a personal explanation he may seek the leave of the House to do so under Standing Order 171.

Mr R. F. H. MAXWELL: It could have been a misquotation by the member.

Rt. Hon. GEOFFREY PALMER (Minister of Justice): The distinction between Standing Order 171 and Standing Order 172 is clear. If the member is not sure which Standing Order he wants to avail himself of he should sit down.

Hon. W. F. BIRCH (Maramarua): The member wants to avail himself of Standing Order 172. He is correct in saying that there has been a misquotation of words in the debate. The member's words have been misunderstood, and he wants to clarify that misunderstanding.

The ACTING SPEAKER (Mr T. J. Young): If the member for Taranaki wants to raise the matter under Standing Order 172, he can be heard again so that he may clarify the matter.

Mr R. F. H. MAXWELL (Taranaki): The member for Hamilton East, who was the previous speaker in the debate, said that I was not present at the select committee hearing. During my speech I referred to my presence at that meeting, and I expressed concern about what happened at it. I was basing my information on personal knowledge.

The ACTING SPEAKER (Mr T. J. Young): Order! The member has used the wrong Standing Order. Standing Order 172 relates to a misquotation of words used in a debate.

Hon. W. F. Birch: He was misunderstood.

The ACTING SPEAKER (Mr T. J. Young): The Standing Order relates to words used in a debate. If the member wants to use that Standing Order he should tell the Chair that a certain member claims he had said this, when he had said that. The member for Taranaki is referring to an event that took place in a part of New Zealand about which a report was made, and he is seeking to put another point of view on what happened. If the member is seeking to make a personal explanation he should do so under Standing Order 171. He is not seeking a correction of words.

Hon. W. F. BIRCH (Maramarua): I raise a point of order, Mr Acting Speaker. I seek your guidance on the use of those two Standing Orders. The member used Standing Order 172 because he had explained that he had been present at the meeting.

Jack Elder: No, he didn't.

Hon. W. F. BIRCH: Yes, he did, and he reaffirmed that by the use of Standing Order 171 and Standing Order 172 a few moments ago. The member for Hamilton East denied that the member had been at the meeting. He had obviously misunderstood what the member for Taranaki had said, and in those circumstances the use of Standing Order 172 is correct.

The ACTING SPEAKER (Mr T. J. Young): Order!

Hon. Jonathan Hunt: It's all right; he's already done it.

The ACTING SPEAKER (Mr T. J. Young): The point of order has been carried further by the member for Maramarua. Standing Order 172 is used when there has been a misquotation or a misunderstanding of what a member has said. Has the member for Taranaki finished?

Mr R. F. H. MAXWELL (Taranaki): Yes.

WARREN KYD (Clevedon): I raise a point of order, Mr Acting Speaker. It has been reported to me that the member for Hamilton East made a statement to the effect that Opposition members orchestrated a demonstration at the Hyatt Kingsgate Hotel. I was a member of that select committee, and I consider that---

The ACTING SPEAKER (Mr T. J. Young): Order! That matter is a debating issue; it should not be raised by way of a point of order. The House divided on the question, That the report do lie upon the table.

Ayes 41

Austin; Bassett; Braybrooke; Butcher; Caygill; Cullen; Davies; Dillon; Douglas; Duynhoven; Elder; Fraser; Goff; Gregory; Hunt; Keall; Kelly; King; Matthewson; Maxwell, R.K.; Moore; Neilson; Palmer; Prebble; Robinson; Rodger; Shields; Shirley; Simpson; Sutherland;

Sutton, J.R.; Sutton, W.D.; Tapsell; Tennet; Terris;  
Tirikatene-Sullivan; Tizard; Wallbank; Woollaston.

Tellers: Mallard; Northey.

Noes 28

Anderson; Angus; Birch; Carter; East; Gair; Gerard; Graham; Kidd;  
Kyd; Lee; Luxton; McClay; McCully; McKinnon; McLean; Marshall, D.W.A.;  
Maxwell, R.F.H.; Meurant; Munro; Peters; Smith; Upton; Wellington;  
Williamson; Young, V.S.

Tellers: Gray; McTigue.

Pairs

For: Anderton; Clark; de Cleene; Dunne; Gerbic; Jeffries; Kirk;  
Lange; Marshall, C. R.; Moyle.

Against: Banks; Bolger; Burdon; Cooper; Falloon; Grant; O'Regan;  
Richardson; Shipley; Storey.

Majority for: 13

Motion agreed to.

**5 May 1988, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 488, pp4017-4028**  
**Treaty of Waitangi Amendment Bill (Introduction and First Reading)**

TREATY OF WAITANGI AMENDMENT BILL

Introduction

Hon. PETER TAPSELL (Minister of Police): On behalf of the Minister of Maori Affairs, I move, That the Treaty of Waitangi Amendment Bill be introduced. The Bill has arisen from the commitment the Government gave in response to the Court of Appeal case on the transfer of Crown land to State-owned enterprises, and the subsequent settlement with the New Zealand Maori Council. The commitment was that the Waitangi Tribunal would be given an increase in membership, and that other measures would be taken to help it to cope with its already very heavy work-load and the increase in that work-load that will follow the passage of the Treaty of Waitangi (State Enterprises) Bill.

The Bill will do several things. First, it increases the membership of the tribunal from 7 members to 17 members, including the chairperson, who will continue to be the Chief Judge of the Maori Land Court. Secondly, the Bill continues to provide for the appointment of members to be made with regard to personal attributes, and knowledge of, and experience in, different aspects of matters likely to come before the tribunal. In addition, all appointments must be made with regard to the partnership between the two partners to the Treaty of Waitangi. That provision will preserve a reasonable racial balance amongst the members. Thirdly, the Bill provides for the appointment of a deputy chairperson to act in the place of the chairperson. That deputy chairperson must also be a judge of the Maori Land Court.

Fourthly, the Bill will enable the tribunal to sit in divisions. At present it does not have that ability. Those divisions may be composed of three to seven members. By virtue of that provision, claims will be able to be held concurrently, and that will enable the tribunal's work to proceed much more expeditiously. Fifthly, in addition, the Bill provides for the appointment by the chairperson of presiding officers in respect of each claim. Those presiding officers will chair each division for the purposes of hearing individual claims. The presiding officers will be the chairperson; the deputy chairperson; any Maori Land Court judge, who need not otherwise be a tribunal member; or tribunal members who are barristers and solicitors of 7 years' standing. Sixthly, the Bill provides that the tribunal may defer the hearing of a claim for good reason, and one good reason may be the advisability of hearing several claims

together when they relate to the same matter.

Seventhly, the Bill provides power for the tribunal to state a claim to the Maori Land Court or the Maori Appellate Court to determine tribal boundaries, whether land or fishing, and to decide on competing claims by groups of Maori people. The tribunal's essential role is to adjudicate claims between Maori people and the Crown. It does not necessarily have the experience or expertise to determine disputes between Maori people that may arise during a hearing. The Maori Land Court and the Maori Appellate Court do have that expertise and experience. Such a case-stated procedure will enable the tribunal to concentrate on its primary role while the technical and investigative matters are dealt with by the Maori Land Court. I commend the Bill to the House.

Mr SPEAKER: This is not a money Bill.

WINSTON PETERS (Tauranga): At 12.30 p.m. today a telephone call was made from my office to the office of the Minister of Maori Affairs. A message was left for the private secretary asking that I be supplied with a copy of the Bill. The Bill was not available then, but became available at 1.30 p.m. At 2.30 p.m. no copies were available to my colleagues. Where is the Minister of Maori Affairs, who is responsible for this Bill? Jefferson said that if people cannot be responsible for governing themselves, who can they govern? An old saying in Maoridom is: ``If you can't do anything for your own people, then who can you help?' ' The Minister of Maori Affairs is among his own people---the people of Tainui---today, trying to sell his partnership perspective while the House is sitting under urgency. I am told by the Minister of Police, who is the member for Eastern Maori, that the Minister of Maori Affairs gave a commitment to the Court of Appeal in respect of the Bill. I make no bones about it. Every Maori should know that the Minister of Maori Affairs has been overtaken and is obsolete and irrelevant. His role has been usurped. Twice today the Minister of Justice has taken his role---

Rt. Hon. Geoffrey Palmer: That's not correct.

WINSTON PETERS: The Deputy Prime Minister had the effrontery to settle the deal between the Maori people and the Crown in the Court of Appeal, and he attached the Bill to the settlement. The Minister does not know the effrontery and insult that he visits on the Maori people, because he is patently ignorant of Maori culture.

Trevor Mallard: He was sued.

WINSTON PETERS: If the Minister was sued, and he was supportive of the people who sued him, why did he spend hundreds of thousands of dollars trying to fight them in court? In the duplicitous way that has become his wont today---

Mr SPEAKER: Order! The member ought to choose his language with care, because words that give offence cause speeches to be interrupted and those words to be withdrawn. The member should also deal with the Bill. The whereabouts of the Minister of Maori Affairs, in whose name the Bill stands, is of some importance, but the member has canvassed that matter and should now deal with the merits of the Bill and whether it should be introduced.

WINSTON PETERS: The Minister who introduced the Bill tonight said that the Bill was a result of a commitment given to the Court of Appeal and I hang my speech on that statement.

Rt. Hon. Geoffrey Palmer: He didn't say that.

WINSTON PETERS: The Minister did say that, and I will swear to it. I know that Hansard will show that the Minister made that statement, because I wrote those words down. The Minister of Police, who introduced the Bill, can tell me whether he said that a commitment had been given to the Court of Appeal.

Trevor Mallard: Appellate court.

WINSTON PETERS: It is not an appellate court. The Minister of Justice may be embarrassed, but he knows nothing about what Maori people feel and think. The insult he has visited upon the Minister of Maori Affairs is an insult also to the Maori people. If this matter is one of urgency and commitment, why is the Minister of Maori Affairs not in the House to introduce the Bill? What is he doing amongst his own people? They trust him, and they put him here. Surely they were consulted before he presented any other paper to the House. Why does he need to sell it to them today? That excuse will not wash, and the Minister of Justice knows what I am talking about. For months he has been running tackle for that Minister, as has every other Government member, and that should not happen. It is the Maori people who will lose out, as they will lose out from the Bill. The Minister of Police said that a commitment had been given to the Court of Appeal. Parliament does not give commitments to any court. Parliament writes the law, it prepares it, and it examines it. When Parliament has finished, and the law has received the assent of the Governor-General, the court may interpret it. Parliament does not give commitments to the Court of Appeal, and the judiciary will never articulate political choice, which is what the Minister said tonight. It is rubber-stamping legislation.

The Minister of Justice, that paragon of constitutional virtue, paraded himself up and down the country boring rotary clubs about his philosophical and constitutional purity. How quickly his principles have crumbled since coming to office. It is disgraceful that after 3[1/2] years in office he has allowed a Minister to tell the House that Parliament must do what it has committed itself to the Court of Appeal to do. Parliament must not allow the judiciary to articulate a political choice in this country. If it does, we will not have a constitutional democracy in the manner we have been led to understand it for generations. The Minister of Justice should deal with that issue, because it is fundamental and elementary.

Hon. Peter Tapsell: It wasn't what I said.

WINSTON PETERS: It was elementary to the Minister's speech.

Hon. Peter Tapsell: It wasn't!

Rt. Hon. Geoffrey Palmer: The member should clean out his ears.

WINSTON PETERS: Did the Minister of Police say---and I ask him as a man of honour---that a commitment had been made to the court?

Hon. Peter Tapsell: No, I didn't.

WINSTON PETERS: In no way could that statement be construed from his remarks?

Hon. Peter Tapsell: Some people might.

WINSTON PETERS: The Hansard record will prove who is right and who is wrong.

Rt. Hon. Geoffrey Palmer: Ha, ha!

WINSTON PETERS: The Minister of Justice should not laugh in an embarrassed manner. He is the man who in December 1986 told everybody that he had served the interests of the Maori people well and that they had nothing to worry about. He convinced many Government members, who do not believe in the matter today, to vote for it at that time, and he spent thousands of dollars fighting it in the Court of Appeal. The day after the court decision he had the effrontery to say how happy he was that the decision had gone against him. The Minister is a ``you know what''. I cannot use the word, but the public and the Maori people know what it is. The Bill does not deal with the real issues of concern to Maori people. The Minister of Justice put all of his principles to sleep when he drafted the Bill.

The House knows that it was the Minister of Justice who drafted the Bill, and that he was frenetic and in a panic when he did so. He has increased the membership of the tribunal, but the tribunal already has a 42-year backlog---and I am talking about 150 cases,



which make up a 40-year backlog---and there will be scores more cases before the Bill is even passed through the House. Therefore the Government has not addressed the real problem. Although Opposition members will not vote against the introduction of the Bill, the fact is that it is unacceptable, and will only exacerbate the tensions between Maori and Europeans. All of the polls recently suggest that Maori land claims---

Anne Fraser: It's what the member wants.

WINSTON PETERS: I am a Maori, so why I would want that tension? What does the member for East Cape know about the way Maori people feel---apart from moving round her electorate before an election and telling a whole tissue of fabrications about why they should vote for her---whilst the dole queues grow longer and longer day by day and while there is unmitigated violence in her electorate. This morning, a man had half his farm property burnt down.

Trevor Mallard: I raise a point of order, Mr Speaker, in relation to two matters---first, the way in which the member was addressing the introduction of the Bill; and, secondly, whether he should address you or stand with his back to you.

Mr SPEAKER: The member does not need to face the Chair during the entire course of his speech, so that was not out of order. However it would be out of order if the Chair gained the impression that the member was deliberately speaking in that way. In fact, the member had turned to respond to an interjection from a member at the far end of the House. However, he probably carried his responses on for slightly too long, and was starting to get away from the point of the debate---the introduction of the Bill.

WINSTON PETERS: Thank you for a very fair decision, Mr Speaker. There is a need to reconcile the claims of Maori people quickly, and nothing is proposed in the Bill that gives any certainty or assurance in relation to that desirable course of legislation. It is still unjust to suggest that appeal procedures are denied to all parties. The plain fact is that there is only one appeal procedure. If one's tribe does not agree to the boundaries one may go from the Maori Land Court to the appellate court, and that is the only appeal procedure that applies to anybody. If one does not like the decision of the tribunal, it is too bad, because it has the highest powers of any court in the British system of justice---that is, if one takes a case to it, but does not like the decision, one has no right of appeal at all. It has offered one small ground of appeal in relation to Maori people who may dispute the tribal boundaries; and after that it goes to the Maori Appellate Court.

The Minister of Police knows as well as I do that one of the serious issues that has now arisen in the Maori world---and we have seen it in MANA enterprises, and we are seeing it in the Maori Access scheme---is the internecine strife between tribes and subtribes about the allocation of money. The member for Northern Maori knows that that is so, and the member for Southern Maori knows that it is so, and that it is of real and grave concern. I can prove categorically that in Manawatu today seven major people, or iwi, have been missed out completely, and in Taranaki another scandal is about to break for the same reason. The Bill does not address the practical, serious problems that now confront the Maori people. On 22 March the Minister of Maori Affairs gave a press statement---no doubt it was prepared by his new press officer, who is doing his best to make the Minister look good; but he is no more successful than the last one.

Hon. W. F. Birch: He's got a big job!

WINSTON PETERS: Yes, he has, and he is coming from a long way back. Worse still, he is coming from a position of power that has been totally usurped by the Prime Minister, the Minister of Justice, and every other Minister but the Minister concerned. In the

Minister's press release of 22 March he talked about a backlog of claims, and an increased work-load. He said that he would introduce a Bill that would include provisions to increase membership from 7 to 16. Without telling the Maori people, he said that racial bias, which the Government made much of in the past, would be removed so that there was no guarantee of the Maori majority as in the past. I do not complain about that, because I think it was wrong to have had a Maori majority in the past. The Minister went on to say that the maximum number of members, including the chairperson, to consider any claims should be seven. However, the worst thing was that three members could make a decision. It is worse when only three members can make decisions on behalf of the tribunal. I do not believe that the people will wear that.

The Minister said that one of those three members must be a Maori. My concern---as I am half European---is, why should one member not be a European? What is going on in the Government? Can it not get the matter right? At the end of the day the Government cannot understand that we are all New Zealanders; that is what we are when we travel overseas. New Zealand is 3 000 000 people against the world. We are not Maori, Asian, Scots, or Irish; we are New Zealanders of different backgrounds, different beliefs, and different races. However, we are all New Zealanders and we are the only 3 000 000 people that New Zealand has. The Government cannot get past its ethnic, liberal, guilt conscience that tries to solve problems of the past. I come from a farming family, and one thing I learnt was that one cannot plough a field going backwards. The same applies to race relations. We must look forward in race relations and the future development of New Zealand.

Hon. Peter Tapsell: That's leadership stuff.

WINSTON PETERS: It is not; none of us have pretensions. We are behind the man who is the best and most honest leader that is offered to New Zealand---on this side of the House. [Interruption.] He has not sold out his principles and beliefs as the member for Hamilton West has done.

Mr SPEAKER: Order! I invite the member to talk about the Bill.

WINSTON PETERS: I am trying to talk about the Bill in a global and futuristic sense. I am sure that the people from the West Coast believe that, because they are among the hundreds of thousands of New Zealanders---whom I call silent New Zealanders---who have no say in what goes on. They do not have a say because of the oppression of a liberal, urban minority in Cabinet that does not care what anyone thinks. The Government listens to academics; however, no one speaks for the ordinary people who are the backbone of New Zealand and who should be represented by the Bill. [Interruption.] The Minister of Justice can defend himself if he thinks that defence is possible. However, he probably will not defend himself. The Opposition will not oppose the Bill, although it is a vain attempt by the Government, at a critical time of New Zealand's development, to demonstrate to the Maori people that it is their friend. That day has gone; it is too late. I fear for the future of New Zealand if this Bill is the best the Government can do.

Rt. Hon. GEOFFREY PALMER (Minister of Justice): The member for Tauranga made a series of mistakes during his speech, and those mistakes need to be corrected. The first mistake that the member made was his statement that the Minister of Police, who introduced the Bill on behalf of the Minister of Maori Affairs, had said that the Government had introduced the Bill because of an undertaking given to the Court of Appeal. He repeated that allegation several times. Although the Minister of Police corrected that allegation by way of interjection the member persisted in repeating it. That statement is entirely and completely incorrect. It was not made by the Minister,

although the member for Tauranga said that he had written down what the Minister had said.

The Minister's speech notes state: ``This Bill has arisen from the commitment the Government gave in response to the Court of Appeal case on the transfer of Crown land to State-owned enterprises and the subsequent settlement with the New Zealand Maori Council.'' In fact, the issue that arose during the course of negotiations was that if justice were to be accorded Maori claimants---I expect the member for Tauranga to be interested in the subject of justice being afforded to Maori claimants---it was important that the case-load before the tribunal be considered. The case-load needed to be considered not only for cases arising from State-owned enterprises but also for cases relating to the ordinary business of the tribunal. There is a great distinction between the ordinary business of the tribunal and the business dealt with by the tribunal in relation to State-owned enterprises. The tribunal can make orders in relation to the land owned only by the State-owned enterprises. In relation to all other matters, all that the tribunal can do is make recommendations to the Government. It has no power whatsoever to make a binding, final order in relation to land or anything else. That is an important matter for members to understand, because several people have tried to create fear and loathing by suggesting that the tribunal will make binding findings in relation to private land. The tribunal does not have that capacity, and it will not be given such a capacity as a result of the Bill.

When the Government realised that it was necessary to implement a more expeditious means of advancing the cases before the tribunal, it asked the tribunal about the measures that might be taken to discharge that purpose efficiently. Indeed, the Minister of Maori Affairs issued a press statement on 22 March in which he foreshadowed the changes that would be made. Those changes have now been drafted into law, and they are in the Bill before the House tonight.

In advancing the Opposition's case, the member for Tauranga left members in doubt about the nature of that case. He said that the Opposition would vote in favour of the Bill, but, on the other hand, he said that the Bill was a disgrace to parliamentary democracy. Exactly how that case is established is difficult to understand. However, I expect that it is established on the basis of his own false premise that the Bill was the result of undertakings given to the Court of Appeal, when, in fact, the undertakings were the result of the settlement of a case before the Court of Appeal---and that is a different matter. In any event, the changes in the Bill relate not only to that case but to all of the cases that are before the tribunal. That is the essential distinction.

Procedural changes, such as the changes made to the composition of the tribunal, and all of the other changes made in the Bill, relate to the whole of the tribunal and all of the matters that are before it. It is important to understand that in order to carry out justice to the two partners to the treaty---the Crown and the Maori people---it is necessary to have ways in which to deal with disputes quickly. Because of circumstances that were not foreseen by anyone, the number of claims has increased greatly, and they must be dealt with. The tribunal now has research facilities that enable it to deal with claims that relate back to 1840, and it is sometimes necessary to carry out detailed research in order to do that.

I am certain that if New Zealand is to enjoy racial harmony, peace, and tranquillity, Parliament must consider ways in which Maori grievances can be dealt with. If the Government does not provide the means by which those claims can be examined, the Maori people will harbour a sense of injustice. The Bill is designed to alleviate that sense of injustice, and to provide an outlet, through peaceful means,

by which decent claims can be examined, and recommendations can be made to the Government. It is important to do that well.

The procedures contained in the Bill are a considerable improvement on the procedures enjoyed by the tribunal in the past. They are an improvement mainly because all of the measures contained in the Bill are the result of suggestions made to the Government by the tribunal. The tribunal enjoys mana amongst the Maori people. It also enjoys a high reputation for doing its job properly, getting the parties together, finding out the nature of the claims, and writing extremely persuasive reasons in support of its adjudications.

In a very short time the tribunal has established itself as an important part of the New Zealand constitutional framework, dealing with treaty issues that go back to the very foundation of New Zealand's constitution in 1840 when the treaty was entered into. By 1990 the Bill will demonstrate that New Zealand has a means of providing justice for Maori people in New Zealand, and by those means racial disharmony will be avoided.

Hon. J. B. BOLGER (Leader of the Opposition): The Minister of Justice made a point of observing that the Bill is designed to relieve the sense of injustice felt by some Maori New Zealanders. I remind him that many non-Maori New Zealanders feel an equal sense of injustice at his Government's actions. They feel an equal sense of injustice, an equal sense of outrage, and an equal sense of anger.

The need to increase the membership of the tribunal that the Minister spoke about is, of course, directly related to the Government's decision to open up the tribunal to claims going back to 1840. It is worth recalling at this time that when the Labour Government first introduced this legislation in 1973 it determined that claims should be lodged only from that day forward. The Government was subsequently persuaded to open up the tribunal to claims that could go back to the signing of the treaty itself. There is nothing surprising about the tribunal's being so far behind in its work that it has claim stacked upon claim, and that it has been estimated by some people that the tribunal has 50 years' work in front of it, at its present capacity to sit and make recommendations on those claims. Clearly that is a source of tension and concern both to claimants and to those who may be affected by a recommendation or subsequent decision of the Government at the time.

The House is considering very important legislation that affects all New Zealanders. The Bill is not just legislation for Maori New Zealanders; it is legislation that goes right across the board, and all of us, as New Zealanders, are affected. The recommendations that the tribunal makes after hearing claims on which it has had to adjudicate between the Maori claimant and the Crown will possibly transfer assets of immense value from the Crown to one sector of New Zealanders---not Maori New Zealanders in total, but to a tribe, subtribe, or iwi.

One has only to reflect upon the enormous land claim in the South Island at present. It has been touted abroad that the claim is worth \$500 million, \$1 billion, and I also heard one figure---going way over the top---of \$1.5 billion. Whatever the actual amount, the claim involves vast sums of money if it were to be accepted in its entirety, and the tribunal were to make a recommendation to the Government that some adjustment or compensation be made according to the suggestions that have been touted about the value of the assets sought. It is beyond argument that, if the Crown had to confront a recommendation worth \$1 billion, that would affect every New Zealander.

I endorse the comments made by my colleague the member for Tauranga. Why is Parliament debating such an important Bill on the last day before the recess, just as the House would be going off the

air if it were working normal time?

The Minister said that the Government would increase the tribunal's numbers, and I am pleased about that, because I made that recommendation. I criticised the tribunal recently on two grounds. First, that its membership was biased towards the Maori people, and I believed that that bias was unwise. It has been removed, and I acknowledge that. Secondly, the tribunal clearly would have been too small to handle the volume of claims. That matter has also been dealt with in the recommendation for a tribunal of a chairperson and 16 other members. It can obviously then be broken into smaller groups to hear individual claims. I want some indication from the Minister about how long he expects---now that the Government has made the judgment to increase the size of the tribunal---that the claims before it will be heard. Does the Government expect that the tribunal will be able to hear all of the claims in 5 years?

The Minister of Justice said that by 1990, which is only 2 years away, remarkable progress will have been made in resolving the outstanding issues that date back to 1840. That seemed to me to be blind optimism. In determining 16 additional members one has to presume the decision was made on the same basis, estimate, or judgment of how long the tribunal will take to resolve the outstanding claims. It would be helpful to everyone if we could have some indication from the Minister on that matter.

Clause 4 highlights the scope of the tribunal's work and the scope of its decision-making. It has the responsibility of referring from the tribunal to the Maori Appellate Court matters of fact, ``or of Maori custom or usage'' in relation ``to the rights of ownership of any particular land or fisheries according to customary law principles of take and occupation or use''; and ``calling for the determination, to the extent practicable, of Maori tribal boundaries, whether of land or fisheries''. It requires no imagination to reflect on the enormity of that responsibility.

I want to consider fisheries. I know of no boundaries that have been set. There are now suggestions that Maori canoes could have been taken out 200 miles and beyond to fish, and therefore that all the fish inside New Zealand's 200-mile exclusive fishing zone belong to the Maori people. There are extravagant claims everywhere and they all have to be handled and determined, not in the interests of one particular sector or group, but in the interests of New Zealand. To highlight the problems facing the tribunal I want to draw the attention of the House to a previous interpretation of the Treaty of Waitangi. It was made by one of the more distinguished Maori New Zealanders---some would say he was the most distinguished---Sir Apirana Ngata, who was a member of the House for about 35 years or 36 years at the turn of the century. In his explanation of the Treaty of Waitangi in 1922 he said that if he were to give a short definition it would be as follows: ``The treaty created Parliament to make laws.'' That is what we are in the process of doing now. ``The treaty has given us the Maori Land Court with all its activities. The treaty confirmed Government purchases of land''---which is still being done---``and it also confirmed past confiscations.'' I shall come back to that matter in a moment. ``The treaty sanctioned the levying of rates and taxes on Maori land. It made one law for the Maori and the pakeha. If you think those things are wrong and bad then blame our ancestors who gave away their rights in the days when they were powerful.''

I want to focus on one portion of that explanation of the Treaty of Waitangi by that former very distinguished member of the House, Sir Apirana Ngata, and arguably one of the great Maori people of modern history. He claimed in that explanation that the Treaty of Waitangi confirmed past confiscations. I am certain that some would

argue about that issue, and I shall not adjudicate on it tonight, but it adds to the responsibility of the tribunal. It adds to the difficulty of its work.

A different interpretation of the treaty has emerged tonight. It is a definition that is removed from that extended by Sir Apirana Ngata in 1922. It is not for me to say which interpretation is right, but it is for me to say that we should not believe that some of the more flamboyant or extravagant presentations about what the Treaty of Waitangi meant in 1840 are necessarily correct.

Rt. Hon. Geoffrey Palmer: I agree with that.

Hon. J. B. BOLGER: Thank you. I am pleased that the Minister of Justice agrees with that point. It is important that we put to one side some of the extravagant claims. If we do that, and it seems that there is agreement on both sides of the House that we should, some of the tension about the treaty through the medium of the tribunal, and through the medium of its powers to recommend to the Government to take this or that, will be eased. We will take some of the tension out of the argument, and perhaps move to a more constructive phase in dealing with outstanding issues. However, I am concerned that the issues may continue without end, and that is why I asked the Minister how long he expects the tribunal to take to deal with such issues.

Rt. Hon. Geoffrey Palmer: It's hard to tell.

Hon. J. B. BOLGER: Well, obviously some judgment was entered into to determine that there should be 16 members on the tribunal. The figure was not plucked from the air. I hope that the Minister can respond to that question.

Dr GREGORY (Northern Maori): Tena koutou katoa. I listened with great interest to those members who have taken part in the debate, and that brought my mind back to an observation about which the House should take note. One of the greatest difficulties we have as New Zealanders is that we cannot see ourselves very clearly. It often takes an outsider to come into the country and point out those circumstances that highlight the injustices about which we are often blind. I suppose that that process is part of our growing up as a nation. I point out that fact because the matter of race and cultural mix must be thought through very carefully in the context of the Bill being debated tonight. That aspect is an important part, or a very important parameter, that should be considered, because it relates to the question of who was involved in the signing of that important document---the Treaty of Waitangi. If that can be done, perhaps members will understand the subject of the debate a little more clearly.

For example, I noted in the course of the exposition by the Leader of the Opposition that he could not get his facts straight. The Waitangi Tribunal in its initial form dealt with matters referred to it concerning treaty grievances that went back only as far as 1975, not 1973. His memory on such an important issue should not have let him down. The other important issue he raised was that it would be 40 to 50 years before those issues could be brought to the tribunal to be resolved. Goodness knows where he plucked that figure from! It came from the member for Tauranga, and I am not sure how good his mathematics are. If the members can tell the House how they arrived at that figure I am sure that the nation would be most interested.

If people use their common sense about what is happening with the tribunal and the issues before it they will realise that, because of its new power to consider grievances back to 1840, the tribunal's work-load will increase. The Leader of the Opposition should listen, because he may miss the point. The recent State-Owned Enterprises Act gave rise to another Bill that was debated in the House tonight---the Treaty of Waitangi (State Enterprises) Bill. I do not think that it takes much thought to realise that the work-load of the present

tribunal will be stretched out---I would not say to 40 or 50 years, but certainly for some considerable time in the future.

The purpose of the Bill is to deal with that problem, and the Minister of Justice was asked how long it would take to redress all of the issues at present before the tribunal. I suppose that if the Minister were the fount of all knowledge he could answer the question, but he has not gone so far as to say that he is. No one knows. Parliament must implement the machinery to speed up that raft of issues, and is doing that by increasing the membership of the tribunal from 7 to 16 and by allowing divisions within that number to allow the total number of 16 to act as separate and independent divisions. It surely does not take much imagination to realise that the tribunal will get through a lot more work than it does at present.

The Leader of the Opposition highlighted the issue of cultural mix and of race. The Treaty of Waitangi in 1840 was between Maori chiefs and Lieutenant-Governor Hobson, representing the British Crown. All of the other groups at the time would have come within the jurisdiction of the British Crown and would have been responsible to the Crown but not necessarily to our people, the Maori people, who were the other signatories to the document. The injustices are between the Crown and the Maori people. For all of the other races that have come to New Zealand and have intermarried with Maori and European people the result can only be in one direction. For example, if a Scot---and I am part Scottish---a Chinese, or a Samoan should marry a Maori, that person becomes part of the Maori race.

The issue is the part of Maoridom that resides within each individual, and if an injustice has been done as a result of the treaty, that injustice must still be dealt with. The other part of the person is not affected, except perhaps when the person questions why the Maori half is not being treated as well. In a sense, that position may cause a form of cultural schizophrenia. However, whatever the cultural mix, the important issue is the redress of injustice between the Crown and that part-Maori person who is part of the debate.

The Bill will help to resolve all future problems. Undercurrents exist within our society. They have been pinpricked by some, while others have attempted to smooth the ruffled waters. The Government has had the courage to act positively, and right-thinking people will not miss that point. Any discontent in any sector of society will permeate the whole society. The Bill redresses that matter, and I fully support it. I was interested that the Leader of the Opposition was reported in some newspapers as having spoken about the present composition of the tribunal and its bias in the number of its Maori members. The member for Rotorua also raised that point. If one were to turn the matter round and consider the number of institutions in society that had a Maori component, members would jump up and say that that was not right because there was not a representative on that institution.

WARREN KYD (Clevedon): I shall vote in favour of the introduction of the Bill, because the question of additional members on the Waitangi Tribunal to deal with claims more quickly and to deal with boundary and intertribal disputes must be dealt with by a select committee. However, I should first like to satisfy my curiosity about the proposed new section 5(10) in clause 7, which states: ``Except as expressly provided in this Act, the Tribunal may regulate its procedure in such a manner as it thinks fit, and in doing so may have regard to and adopt such aspects of te kawa o te marae as the Tribunal thinks appropriate in the particular case, but shall not deny any person the right to speak during the proceedings of the Tribunal on the ground of that person's sex.''

explain the clause? Does it mean that the tribunal does not always act in accordance with custom? It seems somewhat out of place in this Bill.

The Bill arises out of the failure of the Minister of Justice in relation to the State-Owned Enterprises Act. It was pointed out to him when the Bill was being debated that Maori claims could be lost and that there was not a method of protecting them. The Minister said quite adamantly that Maori claims would be adequately protected, and he is reported in Hansard, Volume 476, at page 6193: ``It has been the subject of a recommendation made by the Waitangi Tribunal, and, in all respects, the Bill ensures that the rights of people to make claims under the Treaty of Waitangi Act are in no way prejudiced.''

It is a matter of history that the State-Owned Enterprises Act did not protect Maori claimants and that the Government went ahead to set up the State-owned enterprises and made moves to transfer assets to them. That was done without fully consulting the Maori people, without giving full effect to their claims, and without providing proper procedures, and the Maori people had no alternative but to go to the High Court for an injunction and then to the Court of Appeal.

It is a matter of history that the Government resisted those claims and lost, and that the Bill was the result, and has resulted in the avalanche of claims that is now before the tribunal. Had there been proper consultation the matter could have been dealt with in a more amicable and less contentious way, and I do not believe that the large number of claims would have occurred. The Minister of Police said that the Bill would help the tribunal to cope with the load and the increased number of claims.

It is clear that the work-load of the tribunal has increased drastically. At present there are 150 claims before the tribunal, and, as I understand it, 28 claims have been dealt with in the past 14 years. At that rate it could take 75 years to deal with the claims before the tribunal. If 2 tribunals were meeting it would take 37[1/2] to 40 years to deal with the claims before them. The matter is still being left in an unsatisfactory state. In some cases two generations of Maori people might have no redress.

The claims being made by the Maori people, and the Maori aspirations, deserve and demand more urgent treatment. The longer the issues are left unresolved, the louder the claims will become, and it will encourage extremism. Better procedures are needed. The claims cannot be allowed to go on for too long. Further claims will be brought. So far, only 150 claims have been made. Many other tribes and Maori groups are promulgating their claims, which have yet to be filed. It is not known how many claims will come before the tribunal. Better procedures are needed to deal more quickly with the claims.

The main fault of the tribunal procedure is that it is too slow. The tribunal deals with only two claims a year. I suggest that not only Maori court judges but also High Court judges are also needed. That suggestion is in accordance with the intentions of the Bill to give more non-Maori representation. High Court judges ought to be able to chair the tribunal when it deals with claims. They would bring an element of procedure and experience that might hurry up the proceedings. There must be a thoroughgoing examination of the procedure. It would add lustre and more mana to the court.

I note that the Maori Land Court and the Maori Appellate Court are empowered to deal with the questions of tribal boundaries and competing claims between the tribes. I also note that the Chairman of the Waitangi Tribunal is the Chief Judge of the Maori Land Court and the Chief Judge of the Maori Appellate Court. Perhaps the same judge will deal with a claim in the Waitangi Tribunal and with the same claim before the appellate court. That will cause considerable delay. It would be bad for a judge to consider a claim in both courts. That



is wrong in principle, and will cause considerable delay. That is an aspect of the Bill that the Minister should consider more carefully.

I am also concerned that inevitably the Maori Land Court and the Maori Appellate Court will be involved in Maori politics. There are already competing claims between iwi, and between iwi and hapu. Such claims are generating considerable division and heat among the Maori people. I do not want the Maori Land Court to be politicised. The green paper recently gave the indication that the Department of Maori Affairs will be abolished, and for that reason the future of the Maori Land Court will be in great doubt. That would mean that the procedures provided by the Bill will be only temporary, and that more permanent procedures may be needed to settle the claims.

Speed is essential. The claims should not be allowed to continue to the year 2000. That is too long a time, and will create further divisions. Something must be done to resolve the claims much more urgently than can be done under the present procedures. The Government---indeed, both parties---should come up with procedures that will hurry matters up; if that does not happen, the results will be bad for the future of the country.

I am concerned at one phrase in the Bill, which states in the proposed new section 2A in clause 2: ``In considering the suitability of persons for appointment to the Tribunal, the Minister of Maori Affairs---(a) shall have regard to the partnership between the parties to the Treaty...'. There is an element of partnership, but that creates vague, general references that do not have any place in the Bill. I am concerned that the Minister can make appointments. There have already been the disastrous Access schemes and the MANA enterprises scheme, and I am concerned at the calibre of people who may be appointed. Perhaps both the Minister of Justice and the Minister of Maori Affairs should make the appointments. The Treasury domination of appointments could tip the balance in favour of the Crown. That matter should be clarified and made more certain.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): I am pleased that the Bill has been introduced. It continues a series of legislative measures that have been introduced by Labour Governments since 1935. [Interruption.] I am addressing the House, and I hope that the Opposition member who is trying to interject will desist. The Bill is of considerable importance to the Maori people, and for that reason I deserve to be listened to with some respect. The Bill increases the membership of the Waitangi Tribunal from 7 members to 17 members, including the chairperson. The tribunal decided that having 17 members who are able to sit in divisions would enable its work-load to proceed expeditiously. The divisions may comprise between three and seven members. It is expected that between three and five divisions will sit simultaneously. There actually will be more than 17 members, because Maori Land Court judges, who are not normally members, will act as presiding officers. A problem is not anticipated in relation to that matter, because at present all Maori Land Court judges are eligible to sit on the appellate court. A judge hearing a case in the first instance always disqualifies himself or herself from any subsequent appeal, and that matter is provided for in the Bill.

The previous speaker referred to an interesting part of the Bill. It is not a precedent for reference to be made to the fact that no Maori person appearing before the tribunal will be discriminated against, or denied the right to speak, wherever those proceedings are---on the marae or elsewhere---on the ground of that person's sex. Clause 7(10) of the Bill was introduced into the Act by the Treaty of Waitangi Amendment Act 1985. In practice it has not produced any problems on marae in the course of hearings. I clearly remember the day those words were put in. I also remember the immediate approval

of everyone on the committee when the suggestion was made. It was eminently reasonable, not out of place, and certainly not out of time. It is one of the progression of measures that have been introduced by Labour Governments.

From 1943 onwards, compensation payments have been made in relation to many land grievances. I remember listening as a child to the discussions that took place---for example, in Ratana---about those matters. It was recommended in 1960 that a day be set aside to recognise the Treaty of Waitangi. I remember the debate about that matter, and in 1975, along with a colleague, I was involved in the introduction of the measure that set up the Waitangi Tribunal. I disagreed that the tribunal should consider claims made only from 1975 onwards, and that matter was remedied in 1985. The Bill makes even more remedies in that it recognises that no tribunal can cope with such a case-load unless it has an increase in its members. To make such a change is logical, understandable, and eminently sensible---and the Bill is an eminently sensible Bill.

I am sure that members of the committee must come to agree totally with its wisdom, its timeliness, and the fact that it can provide a vehicle and a substructure for improving relationships between the original treaty partners---that provision is something that the House must welcome. I appeal to all members to get behind the Bill's further progress, and to support it. The Bill is so sensible, so timely, and so wise, and it is part of the evolution of justice. It is a response to the aspirations of Maori people---such aspirations as I have heard all my life, and that, indeed, are being fulfilled. Irrespective of what dissidents and extremists might say, the Government has done so much, and the Minister, in particular, has paid cognisance and responded to the yearning and appeal by Maori people.

Even the very fact of the acceptance of the tangata whenua status of the Maori people is significant; that phrase was never uttered in the House---it was not part of the legislation. It is part of the phraseology of acceptance by the Government. I remember having a discussion with my friend Mrs Miraka Szazsy at Waitangi itself. I had spoken on the open marae as Minister, and we were talking about the need to recognise that term. It should be recognised that Maori people have proprietary rights and occupational status in this country. I remember the day when Miraka Szazsy eloquently put her case before the Ministers in the Beehive---as she is so capable of doing. Now the position is an accepted fact. The Bill recognises in precise language the tangata whenua status---as I refer to it---of the Maori people.

Now we must have effective, equal participation in the rights and responsibilities of citizenship as described in the third article of the treaty, and I dedicate myself to that end. I compliment the Minister on his continuing raft of Bills that recognise that need. If that need is not recognised in our time and age, I am afraid that there will be an explosion in race relations. This Bill, others that have preceded it, and those that are being introduced in tandem with it and being discussed in the House today, will allay that explosive potential. If they do not, I am afraid that not even logic will contain it. I thank the Minister for the Bill on behalf of the people I represent.

Hon. PETER TAPSELL (Minister of Police): I shall respond to one or two matters raised by members during the debate, because they are important. The first matter related to comments that were expressed by, I think, the Leader of the Opposition. He expressed the opinion that there is concern among some non-Maori New Zealanders about the powers and functions of the Waitangi Tribunal. I accept that that is so. Despite my colleague the Minister of Maori Affairs having gone to

extraordinary lengths to reassure the public, that opinion persists in some areas. I point out that so far the tribunal has shown what I think members will accept is absolute integrity and absolute propriety, and it must surely have shown the public that there is no cause for concern on that score. The tribunal has heard only a few cases. It is noteworthy that it does not have the power to take definitive action, but that it does have the power to recommend to the Government, and I hope that that possibility will reassure the non-Maori public.

The second matter was raised by the member for Clevedon, and it relates to the proposed amendments to the second schedule of the principal Act in clause 7(10). He asked whether that provision clashed with Maori cultural protocol. That matter is often misunderstood---intentionally or unintentionally---and it is important to make the point that it is Maori custom that women should perform the karanga, or call---that practice is by no means universal throughout New Zealand---and that men should respond with the mihi to the dead. I do not know of any marae where women are not permitted to speak at any time. Usually the mihi to the dead is carried out on the actual marae---the courtyard---by men. Normally, the tribunal would retire inside the meeting-house, and that procedure would always provide an opportunity for women to speak. The Bill rightly ensures that, if that is not so, the tribunal will not proceed.

The other matter to which I shall refer is the provision that there should be at least one Maori person on a division of the tribunal. That is only fair. The claim is, after all, between the Maori people and the Crown, and it would be seen to be manifestly unfair by at least some Maori people if there were not a single Maori sitting on the tribunal at a particular hearing.

I deprecate the fact that the member for Tauranga took the opportunity to be unreasonably critical of my colleague the Minister of Maori Affairs. During the past 4 years---the term of the present Minister---there have been more advances in legislation that materially affects the Maori people than there has been at any time in the past 50 years of this Parliament, and for a long time before that. I want to say only that, of all the Maori people throughout New Zealand, there is not a single one who has achieved greater notoriety by attacking Maori issues, and the weaknesses, as he sees them, of certain Maori organisations, than the member for Tauranga has done. I go so far as to say that the member for Tauranga climbed that recent opinion poll on the backs of the Maori people, and I deprecate the fact that he has seen fit to draw attention specifically to my leading the debate on the Minister's behalf. At this moment the Minister is going to great lengths to ensure that Maori people---and non-Maori people, should they be present---are made fully aware of the Government's proposals in relation to the Bill. I emphasise that they are only proposals.

Bill introduced and read a first time, and referred to the Maori Affairs Committee.

**21 June 1988, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 489, pp4560-4586**

**Treaty of Waitangi (State Enterprises) Bill** (Second Reading)

TREATY OF WAITANGI (STATE ENTERPRISES) BILL  
Second Reading

Rt. Hon. GEOFFREY PALMER (Deputy Prime Minister): I move, That this Bill be now read a second time. The Bill reflects the spirit embodied in the Treaty of Waitangi. It gives effect to an agreement reached between the Government and the New Zealand Maori Council, and

the iwi represented by it. That agreement as it is embodied in the Bill enables Crown land to be transferred to State enterprises and then to be onsold by State enterprises to third parties. At the same time it establishes a system that protects present and future claims to the Waitangi Tribunal in respect of that land but no other land. It has no effect on land that is at present in private ownership, none at all.

The Bill contains amendments to the Treaty of Waitangi Act, the State-Owned Enterprises Act, and the Legal Aid Act. Two key provisions are those in the proposed new section 8A of the Treaty of Waitangi Act---which is contained in clause 4---and the proposed new section 27B of the State-Owned Enterprises Act---which is contained in clause 10. The proposed new section 8A provides that if the Waitangi Tribunal finds that a claim is well founded it has power to make a binding recommendation that any land or interest in land transferred to a State-owned enterprise should be returned to Maori ownership. The proposed new section 27B of the State-Owned Enterprises Act enables the Government to give effect to the tribunal's recommendation. It provides that following a recommendation of the tribunal, any land or interest in land transferred to a State-owned enterprise can be resumed by the Crown and returned to Maori ownership. It is also possible for the Crown to resume any land or interest in land onsold by the State-owned enterprise to a third party.

The proposed new section 27A of the State-Owned Enterprises Act, which is introduced by clause 10 of the Bill, ensures that purchasers of land from State enterprises have knowledge of the claims that could be brought in respect of that land and that would result in the return of the land to Maori ownership. That is done by placing a memorial on the title to that land, which provides that the land is still subject to resumption by the Crown.

I turn to Part I, which contains amendments to the Treaty of Waitangi Act. I have already mentioned that a key section of the Bill is the proposed new section 8A, which enables the tribunal to recommend that land or an interest in land transferred to a State-owned enterprise should be returned to Maori ownership. I stress three facts about the land that is subject to resumption. First, only land or an interest in land transferred to or vested in a State enterprise under sections 23 and 28 of the State-Owned Enterprises Act can be resumed. That means that leases or other interests in land granted by the Crown before the transfer are not subject to resumption. Secondly, private land and Crown land other than that transferred to or vested in State enterprises are in no way affected by the provisions of the Bill. Thirdly, when the Crown has transferred only a limited interest in land to a State enterprise, only that limited interest can be resumed by the Crown and returned to Maori ownership. That point has not always been understood.

Two changes have therefore been made to make the position clear. First, throughout the Bill the previous reference to land has been altered to read ``land or interest in land''. Secondly, subsection (6) has been added to the proposed new section 8A in clause 4. That subsection emphasises that if interests in land were not transferred to a State enterprise under section 23, or vested in a State enterprise under section 28 of the State-Owned Enterprises Act, they cannot be resumed by the Crown. An example of such an interest that is outside the resumption provisions of the Bill is the lessee's interest in a lease that has been granted before the transfer to the State enterprise of the freehold title to that land.

I turn to subsection (5) of the proposed new section 8A. Subsection (5) avoids the conflict that previously existed with the provisions of sections 40 and 41 of the Public Works Act by providing

that those sections shall not apply to land that has been resumed pursuant to the provisions of the Bill. Sections 40 and 41 of the Public Works Act provide for land that is no longer needed for a public work to be offered for sale to the former owner. A considerable amount of Crown land was acquired under the Public Works Act. If sections 40 and 41 applied to land resumed by the Crown they would prevent the Bill from working as intended, and would restrict the powers of the tribunal in many claims.

The proposed new section 8C is another important section. It lists those persons who have a right to be heard as a party to the Waitangi Tribunal hearing regardless of claims to land transferred to or vested in State-owned enterprises pursuant to sections 23 or 28 of the Act. That provision has been criticised for not granting a right to be heard to State-owned enterprises or persons to whom a State-owned enterprise may have onsold the land. It is not appropriate for State-owned enterprises or subsequent purchasers to have a right to be heard. That is because of the nature and purpose of the Bill.

The Bill is designed to preserve the position that Maori claimants under the Treaty of Waitangi Act would have enjoyed if the transfers to State-owned enterprises had not taken place. That position involves the ability to deal with the Crown alone. Neither the partnership relationship established by the treaty nor the practical issues should be interfered with or confused by the intervention of third parties. However, evidence held by a State enterprise or subsequent owner can still be put before the tribunal in support of the case of one of the parties. It can also be called by a Minister or the Maori claimant. The tribunal also has the power under clause 6 of the existing second schedule of the Treaty of Waitangi Act to receive any evidence it considers necessary to deal effectively with the matters before it.

The other amendment to the proposed new section 8C that I want to comment on is the provision relating to the right of Ministers of the Crown to appear before the tribunal. Previously, the section provided that the Minister of Maori Affairs, and any other Minister of the Crown who had an interest in the claim, could appear before the tribunal. The section now provides that the Minister of Maori Affairs and any other Minister of the Crown who notifies the tribunal in writing that he or she wants to appear before the tribunal and be heard is entitled to appear as parties. That amendment ensures that there is no risk of a Minister of the Crown being refused audience before the tribunal on the grounds that he or she has not established an interest in the claim.

I want to comment on the fact that there is no right of appeal from a recommendation of the Waitangi Tribunal. That is consistent with other specialist tribunals. For example, there is no right of appeal from a decision of the Planning Tribunal. However, although there is no right of appeal, there is still a right for a party to proceedings before the Waitangi Tribunal to apply for judicial review on the grounds that the tribunal has not decided a claim in accordance with proper legal principles.

I turn to the proposed new sections 8D, 8F, and 8G. Those new sections provide for applications to be made to the tribunal for the removal of the memorial on the title of land subject to the Bill. There are safeguards that surround that procedure. The memorial can be removed only when there are no claims submitted to the tribunal or when all of the parties to a claim consent. In addition, the applicant must give public notice of the application, and must serve copies of the application on particular persons as directed by the tribunal.

Some changes have been made to those provisions. The proposed new

section 8D now provides that the tribunal may consult the Maori Land Court about the directions that should be given regarding service and public notice of the application. That is because the Maori Land Court may have particular knowledge of potential Maori land claimants and of the areas in which the claimants may live. An amendment to the proposed new section 8F clarifies the information that an applicant must provide to the tribunal in support of an application. The proposed new section 8E provides for the district land registrar to implement the recommendation that land or an interest in land no longer be liable to resumption. That is done by removing the memorial from the title to the land affected.

Amendments to the proposed new section 8E are of a technical nature. They relate to the distinction between land that is subject to the Land Transfer Act and land that is outside the scope of that Act. The proposed new section 8E also provides for the removal of the memorial from the title in cases when land has been resumed by the Crown and returned to Maori ownership.

Part II of the Bill contains amendments to the State-Owned Enterprises Act. I mentioned earlier that the proposed new section 27B in clause 10 was the key provision. It provides for the resumption of land by the Crown after a recommendation from the tribunal that that should be done. It is not mandatory in any case for the tribunal to make such a recommendation. Under subsection (2) of the proposed new section 27B certain interests in land are excluded from the resumption provisions of the Bill. Those interests are land that, at the date of transfer, was subject to a deferred payment licence issued under the Land Act, and leases under which lessees have the right of acquiring the fee simple. A technical amendment has been made to the subsection to refer to land that is vested in a State enterprise by Order in Council under section 28 of the State-Owned Enterprises Act. That amendment corrects an omission. The section previously referred only to transfers pursuant to section 23 of the State-Owned Enterprises Act. Deferred payment licences issued under the Land Act can be transferred to a State enterprise only by being vested in the State enterprise by Order in Council under section 28 of the State-Owned Enterprises Act.

It has been suggested that other categories of interest in land should be specifically excluded by subsection (2). In particular, pastoral leases have been mentioned. The exclusion of pastoral leases is unnecessary, because they are not subject to the Bill to begin with. Under the provisions of section 24 of the State-Owned Enterprises Act pastoral leases are specifically excluded from transfer to a State enterprise. The proposed new section 27C relates to compensation provided to the State enterprise or subsequent owner if the land is resumed by the Crown. Compensation is provided under the relevant provisions of the Public Works Act.

Two amendments were made by the select committee to the proposed new section 27C. Subsection (2) of the proposed new section 27B provides that the existence of a memorial on the title is not to be taken into account when compensation is assessed. Subsection (3) of the proposed new section 27B makes it clear that interests in land not transferred to a State enterprise, such as a lessee's interest in land, cannot be taken when the State enterprise land is taken. I want to make it clear that the Government's intention is that State enterprises, or subsequent owners, whose land is resumed after a tribunal recommendation, will be fully compensated for all losses sustained.

Under the proposed section 27D, special mechanisms are provided for the resumption of wahi tapu---areas of particular cultural and spiritual significance to the Maori people. Wahi tapu are resumed following a declaration by the Governor-General by Order in Council.

There are two important changes to that provision. The first provides that the compensation provisions of the Public Works Act that apply to other land resumed after a recommendation of the Waitangi Tribunal now also apply to wahi tapu land resumed by the Crown. That change will ensure equal treatment for landowners whose land is resumed, whether it is resumed as wahi tapu or after a recommendation of the Waitangi Tribunal.

The second change ensures that any resumption of wahi tapu is not a subdivision within the meaning of sections 271 and 272 of the Local Government Act.

Finally, I turn to Part III, which contains amendments to the Legal Aid Act. Those amendments provide for legal aid to be available to claimants before the Waitangi Tribunal, because claims brought before the Waitangi Tribunal are often brought by tribal groups. Therefore, as well as providing for individual applications, the Bill allows for tribal groups to apply collectively for legal aid. The amendments to the Legal Aid Act contained in clause 15 list the criteria to be applied and are basically the same as those that have already been applied to individual applications. However, the criteria for financial assessment are more flexible than for individual applications because of the varied nature of the groups that may apply.

For example, some groups may be incorporated, and others may not. Members of the groups will have different financial or other interests in the outcome of the proceedings, as well. I emphasise that, in assessing financial resources, Maori land or an interest in Maori land is not considered. That is because, with all legal aid applications, only the disposable capital and income of an applicant is considered in the financial assessment. The nature of Maori ownership of Maori land makes it difficult for an applicant with an interest in it to dispose of that land. Therefore only the rent received from Maori land will be considered as part of the applicant's disposable income.

The Bill is unique. It results from the commitment of the Government and the New Zealand Maori Council and the iwi it represents to the principles of the Treaty of Waitangi. As a result of the joint efforts of both treaty partners, the requirements of Government policy for an effective State-owned enterprises policy, and the rights of the Maori people as protected by the treaty and upheld by the Court of Appeal, have been recognised. No reira, tena koutou katoa. I commend the Bill to the House.

Mr McLEAN (Tarawera): We have heard an extraordinary presentation of recent history. It is history as the Deputy Prime Minister would like to have it recorded---a most extraordinary history from which he omitted all of the back-downs, the betrayals of the Maori people by the Government, and the attempts that he and his colleagues have made to block the Maori people in the matter. Let me say very clearly from the outset that the Bill has raised false hopes amongst Maori people and dangerous fears amongst pakeha people. The Bill represents grave dangers to New Zealanders. It should not proceed in its present form. The Bill does not recognise that in the past 3 years not one Maori has been better off as a result of the Government's policies. The Bill is simply a sop to Maori claims that will not give the Maori people anything effective.

I shall first demonstrate the Government's opposition in relation to the Maori claims. The Government has sought to block Maori claims at every stage in the process. When the land was first sold to the State-owned enterprises there were no discussions with the Maori people. The Government considered that by transferring the land to the State-owned enterprises the Maori people would lose their claims.

The Government was not concerned about the claims. The Government thought it could take the land away so that there was no possibility of that Crown land being used to satisfy Maori claims. The Opposition moved amendments in the select committee, and sought to resolve the position. The Government voted against those amendments. The Deputy Prime Minister explained to his colleagues that a small amendment to the Bill would satisfy the Maori people, would not have any real effect, and would not cause any trouble. My word, he was wrong. It is no wonder that Government back-bench members feel betrayed, because the assurances given to them by the Deputy Prime Minister were not of any value.

Therefore the State-Owned Enterprises Bill was passed, with one small sop---as it was considered by the Deputy Prime Minister---thrown to the Maori people; that sop was another brief reference to the Treaty of Waitangi. Of course, once the Maori people found out what had happened they tried to persuade the Government. However, the Government would not listen. The Maori people dragged the Government to the Court of Appeal, at which the man representing the Deputy Prime Minister---who talks of his great accord with the Maori people---used every legal argument to try to block the Maori claims. The arguments did not work.

I shall read one sentence from the judgment of the President of the Court of Appeal, Mr Justice Cooke, who said: ``The effect of our present decision, built on the Treaty of Waitangi Act and the State-Owned Enterprises Act, is that, in relation to land now held by the Crown, it should never again be possible to put aside a Maori grievance in that way.'' The Court of Appeal told the Government that it must never again try those tricks on the Maori people. That method did not work last century, and it should not have been tried again. The Court of Appeal told the Government that it should go back and reach an agreement. However, even then it took months, and a return to the Court of Appeal, before the Government was prepared to reach an agreement with the Maori Council. Today in the House the Deputy Prime Minister stood up and spoke of the Government's great efforts to co-operate with the Maori people. What humbug! That statement is simply not true. The Government has sought to oppose the Maori people at every stage, in Parliament and through the courts. The Court of Appeal was not moved.

Incidentally, I should say that the same thing happened with the fisheries case, when the Minister of Fisheries issued his individual transferable quotas. He ignored the Maori people, despite warnings from the member for Marlborough and other Opposition members. Once again the High Court had to tell the Minister that he was breaking the law, and that he should go back and negotiate. The effect of the Government's opposition to the Maori people on this issue, as well as the fisheries matter, has been that negotiations have not taken place.

The only circumstance in which a serious attempt was made to resolve the problems was before the Court of Appeal. The reason was that the Government would not talk seriously with the Maori people until the highest courts in New Zealand had told it to do so. As a result, negotiations have been much more difficult and more prolonged. The position is such that it will take even more good will on the part of Maori people and pakeha people for a satisfactory arrangement to be reached, compared with the kind of arrangement that could and should have been reached for the benefit of both parties in 1986.

There is no urgency to pass the Bill. All of the State-owned enterprises have been formed, and all but two or three have completed the purchase of their assets, including land. The others---the Land Corporation, the New Zealand Forestry Corporation, and there may be



one other---are still operating under licence, and without hindrance because they are under licence. They do not need the Bill. I took the trouble to look through some of the agreements for sale and purchase of the other State-owned enterprises. One that will be severely affected by Maori land claims is Government Property Services. It may come as a surprise to the House to know that the agreement for sale and purchase made full provision for Maori land claims, and under the terms of the agreement Government Property Services can carry on effectively whether or not the Bill is passed. That is because, in effect, the Crown has agreed to indemnify Government Property Services against any loss.

A second State-owned enterprise is New Zealand Post. Once again, New Zealand Post has been effectively indemnified by the Crown for any losses arising from Maori land claims. Telecom Corporation is in a slightly different position. Its agreement for sale and purchase specifically refers to the Bill and has clauses that depend for their effectiveness on whether and when the Bill is passed. Telecom Corporation can still renegotiate with the Crown a satisfactory solution so that it can carry on even if the Bill is not passed for a year or two. The Electricity Corporation agreement for sale and purchase contains a clause that stretches some 35 years into the future, so the Bill's not being passed in the next year or two would not cause problems for that corporation.

Let me say that the Bill must be passed, and an agreement must be worked out once it is right, and once it is in a shape that is fair to Maori and other taxpayers alike, and in a form that will enable both pakeha and Maori to accept it. That is not the position with the Bill in its present form. The Bill has brought false hopes and dangerous fears, and it should not be passed in the form in which it is now. Let me refer to one or two specific criticisms arising from the Bill. The Deputy Prime Minister said that the Bill would have no effect on private land. During the select committee consideration Opposition members pointed out that leasehold land, whether Maori or pakeha, could be adversely affected by the Bill because the Bill makes use of the Public Works Act---which is Draconian---both to resume land and to compensate for it.

Under the terms of the Bill and the Public Works Act together a lessee or lessor could lose land to which he or she had good title, lose land to which he or she had guaranteed title, and lose land to which he or she had title through the Land Transfer Office or through the Maori Land Court. That was an aberration. It was not intended. The Opposition picked up the mistake, and the Bill has been amended. What the Opposition does not know is how many other aberrations there may well be because of the Bill's use of the Public Works Act as a mechanism. Although the Deputy Prime Minister is right in saying that the Bill is not intended to apply to private land, he cannot give an ironclad assurance that in no case whatsoever will private land be affected.

I turn now to the core of the Bill's procedures. Under the Bill the Waitangi Tribunal will, for the first time, be able to make recommendations that are binding, but it will be able to make recommendations that are binding in one respect only---that is, in relation to the return of land. When the Waitangi Tribunal has considered Maori claims in other instances it has made a series of recommendations---recommendations about the return of land, recommendations about compensation, recommendations about effluent, and so on. As the tribunal sits to consider the recommendation it should make in any particular case it will have the firm knowledge that its recommendations in relation to land will be binding, but, on the other hand, it will have no idea what the Government will do in relation to the other recommendations and how much compensation will

be decided on by the Government. So the Waitangi Tribunal will need to be much bolder in its decisions on land than it would otherwise be. Giving the tribunal a binding power in relation to the return of land, and giving it merely recommendatory power in relation to other compensation is a hybrid arrangement. That mixture simply does not work.

The second problem faced by the Bill is the huge backlog before the Waitangi Tribunal. Despite another measure that is before the House, to which I shall make only passing reference, the Waitangi Tribunal is utterly bogged down with claims. Already it has made half a dozen recommendations, and each of them is still growing mouldy in the cubby-holes of Government departments. Some recommendations have even been lost, and Government departments do not know where they are. In other words, recommendations already made are sitting and rotting---and I refer to the Orakei recommendation, the Manukau Harbour recommendation, and the Te Ati Awa and Motunui recommendations, amongst others. The tribunal has done its work, but the Government has not done its work. As the tribunal goes through those cases it will decide that under the Bill some land should be returned, and it will make other recommendations, but those recommendations will pile up in a huge compost heap in Government departments while the Government cannot make up its mind what to do about them. Before having the arrogance to come to the House with the Bill, the least the Government could have done would be to clean the slate by going through all of the existing recommendations and deciding what to do about them.

It is interesting that at the select committee the member for Hamilton East made a constructive contribution by floating with witnesses the possibility of amendments, suggesting two amendments, in particular. The first amendment would give other affected parties standing before the tribunal in a second-stage hearing. Once the tribunal had decided whether a claim was valid, the member for Hamilton East proposed that other affected parties who were not allowed in before the tribunal in the first stage would be able to come in at the second stage and argue the case about what should happen with the land. He was not able to persuade his caucus colleagues that that amendment should be included, nor was he able to persuade his caucus colleagues that it was necessary and desirable to have some proper appeal procedure.

The Bill still contains grave defects---for example, the matter of dams, hydro-stations, power-stations, and the machinery within power-stations. Already today---and I shall make only passing reference to the matter---a Bill that deals with machinery in power-stations has gone through one of its stages. It would be quite within the powers contained in the Bill for the Waitangi Tribunal to hand over Benmore power-station to the Ngai Tahu people as part payment for their claim. The Ngai Tahu people have a claim that seems to be one of the more solid claims before the tribunal. However, in satisfaction of that, under the Bill the tribunal could hand over Benmore power-station, together with generators, and Aviemore power-station, together with generators. It could even hand over the half-built Clyde Dam. The Ngai Tahu people could do no worse than the Government in building the dam. That might be the best solution as the Clyde Dam struggles on under the Government. However, that is not the intention of the Bill, and it should not be included in it.

Let us consider the Telecom Corporation and its exchanges. There is an exemption under other law for telephone equipment installed before the beginning of 1988, but new equipment is not so exempt. Once again, if the Ngai Tahu people get the Christchurch telephone exchange they will also get the equipment that was installed since the beginning of the year. The Bill is defective; it is not intended

to allow that, and the provisions must be fixed. The Opposition's main problem with the Bill is that it has raised such false hopes amongst the Maori people, and such dangerous fears amongst the pakeha population, that it has ceased to be a positive contribution to race relations. It presents a real challenge to race relations. The Opposition believes that Maori land claims must be settled fairly and finally; they must also be settled reasonably quickly. We cannot spend the next century stewing over the grievances of last century, but the claims have to be fixed properly in a way that is fair to Maori, to pakeha, and to all taxpayers. The Bill does not achieve that result, and the House should pause, reconsider, and find better ways to resolve this most delicate issue.

Hon. K. T. WETERE (Minister of Maori Affairs): It was interesting to listen to Opposition members. The member who preceded me was one of those who has a bob each way. He said that the Government and the Waitangi Tribunal must be seen to make decisions about those issues outstanding before the tribunal. The Waitangi Tribunal came into being in 1975. What happened between that time and the time the National Government left office in 1984? The tribunal could not deal with three problems that were before it. It could not deal even with Motunui. I went before the former Prime Minister in 1982, and he tried to coerce Maori members of the Labour Opposition at the time---the member for Waitotara would know that. Not 2 seconds after I had agreed, the former Prime Minister found out that the whole of the Labour Party caucus was on my side. Three or four National Government members came running across to the Labour Opposition and said that they were in support. The National Government could finally agree to only two of the recommendations made by the Waitangi Tribunal.

Opposition members have had the gall to talk this afternoon about the Motunui affair. The member for Waitotara would know that the National Government was going to clear through to Aotuaia. What happened? The Labour Government took over responsibility from the National Government. Of course, the member for Marlborough sat on the select committee at Waitara---as I am sure he will remember.

Mr Doug Kidd: With your help!

Hon. K. T. WETERE: Of course I helped, and the Minister of Defence and the Minister of Health were both on the committee. I think that the only member left out was the member for Franklin, who was the Minister of Energy at that time. There are some very vivid memories of the efforts of the National Government in that matter. The member has had the audacity to tell the Government what it should do about the cases before the Waitangi Tribunal, when for all of the years the National Government was in office it did absolutely nothing.

What is the debate about? Last week the matter of race relations and all of that kind of nonsense was raised, and no attempt was made to resolve the issue. I wonder whether the member for Tauranga will speak after me and tell me how the Opposition will attempt to handle the question. All he is after is trying to beat his boss. He is doing a great job and I would encourage him and support him in that. This afternoon it was found that the member for Tauranga opposes the abolition of the Department of Maori Affairs, while his boss---the Leader of the Opposition---said that he agrees with the green paper, and that the department should be phased out. That is the difference between those two members. I support the member for Tauranga 100 percent in his quest for the leadership of the National Party. I am sure that the country would like to know his views on the matter.

It is important, and the Government will make the decisions pertaining to Orakei and to Te Atiawa, and to the other outstanding issues that are before it. Those decisions will not be very much

delayed.

Mr Doug Kidd: Taihoa!

Hon. K. T. WETERE: They will be made in good time---there is no difficulty about that at all. In 9 years the National Government could not get even one recommendation right. There is another Bill that amends the Waitangi Tribunal, and I am sure that it will help to resolve many of the other issues before the tribunal. The Government has other ideas to help the tribunal. The land information office has been established to help the Maori people to research cases. The member for Tarawera used scare tactics. I am sure that everyone who listened to the Deputy Prime Minister earlier would have received much feeling from his speech, because he gave a lot of confidence about resolving the issue so that the people will not be disadvantaged.

The Bill arises as a result of the settlement after the application by the New Zealand Maori Council. I said at the outset, and I am sure that the member for Tauranga heard it, that the council was to be congratulated on the application to the High Court, and on the judicial review of the Government's intention to transfer certain lands to State-owned enterprises. Those lands are, or may be, subject to a claim for ownership before the Waitangi Tribunal. The New Zealand Maori Council considers that the intention of the transfer of the land before the adjudication by the tribunal was in breach of the principles of the Treaty of Waitangi pursuant to the proposed new section 9 in clause 7 of the Treaty of Waitangi (State Enterprises) Bill.

The Bill proposes to introduce a system of safeguards to apply after the transfer of land and assets to the State-owned enterprises. The safeguards are that the Waitangi Tribunal would be able to make a binding recommendation about any land transferred to a State-owned enterprise. The tribunal will also be required to hear any claim relating to any such land under review as if it had not been so transferred, and State-owned enterprises or their successors are precluded from being heard by the Waitangi Tribunal in relation to the lands held by them and on which a claim is being considered.

The proposed new section 8A(5) of the Treaty of Waitangi Act in clause 4 states that the Public Works Act shall have no application on a recommendation to return land to Maori owners. The proposed new section 8A(6) in clause 4 sets out to protect an interest in land acquired before the land was transferred to a State-owned enterprise. The Deputy Prime Minister referred to the amendment that was considered in the proposed new section 8D in clause 4. The tribunal is to be given the power to consult the Maori Land Court about the direction for service, or about the form of the public notice in relation to an application to remove encumbrances on the title when the land is subject to the proposed new section 27B of the State-Owned Enterprises Act in clause 10.

I shall offer an alternative, and I hope that the member for Marlborough is listening. My officials advise me that the tribunal should have the power to refer the matter to the Maori Land Court, because we believe that that is the best forum to deal with the administration of the cases that went before the tribunal---when ownership is to be returned---so that the transition can take place properly. For example, in the case of wahi tapu, the member may not know that section 439A of the Maori Affairs Act allows the Minister of Maori Affairs to set aside a wahi tapu as a Maori reservation. That can take place even on Crown land.

Mr McTigue: One wouldn't give this Minister of Maori Affairs any power.

Hon. K. T. WETERE: It just goes to show how foolish the member is, as the Maori Affairs Act has been in place for some time. Section

439A applies to Crown land and also to Maori land, and a wahi tapu reservation can be set aside, or other specific reserves can be established, as is stated, for spiritual or cultural purposes. I believe that the committee did not have regard to that matter, and that it is time to raise it. I give notice that the Government will do that in the proposed new section 8D of the Treaty of Waitangi Act in clause 4, and in the proposed new section 27D of the State-Owned Enterprises Act in clause 10. It is that matter of wahi tapu that I am sure the Deputy Prime Minister would agree could be dealt with in that manner, since there are areas within the lands under discussion that have that significance. To give proper recognition to the land under discussion, it would then set it aside properly under that provision of the Maori Affairs Act 1953.

I thank the committee for the work it has done. This has been an experience that the House had not contemplated. However, at the same time it gives the House an opportunity to consider in depth Maori spiritual and cultural values, which had not previously been taken on board by the House. The past 2 weeks, and particularly the past week, have given members the opportunity to consider that perspective. The Bill gives the House that opportunity; I commend it to the House.

WINSTON PETERS (Tauranga): The member for Western Maori, who is the Minister of Maori Affairs in name only, chose to raise the matter of the Labour Government's record on Maori people.

Hon. Jonathan Hunt: Oh, really!

WINSTON PETERS: He is the Minister in name only, and everybody in the department will say that. The Deputy Prime Minister knows that, because he is acting as tackle for the Minister of Maori Affairs most of the time. Every Minister knows that. The Minister of State should not sit there and interject. I advise him to keep out of issues about which he knows nothing and in which he is incompetent. In his time in Parliament he has not done anything to help the Maori people. The Minister raised the issue of the Labour Government's performance in relation to the Maori people. This is the Labour Government's record during my time in politics: between 1972 and 1975 the biggest land march that the country has ever seen was led by the Maori people.

Hon. K. T. Wetere: Yes---led by a Tory!

WINSTON PETERS: Were all of the people dupes, who followed her? Did they have no grievance? The Minister is silent now. Between 1984 and 1988 tensions in race relations have been heightened to a level no New Zealander would have dreamt of. That is the Labour Government's record.

Hon. K. T. Wetere: Heightened by the member.

WINSTON PETERS: The Minister interjects that tensions in race relations have been heightened by me. I am happy to talk about that.

Hon. K. T. Wetere: Happy to talk on a marae?

WINSTON PETERS: The Minister has not once taken up the challenge to debate with me on television on such matters. He has been challenged time and time again to appear on television with me, but he has declined.

Hon. K. T. Wetere: I'll debate him on the marae any time---in both languages. [Interruption.]

Mr DEPUTY SPEAKER: Order! The Minister is out of order. His speech has concluded, and it is not proper for him to continue during another member's speech. He is entitled only to ask reasonable questions by way of interjection.

Hon. K. T. Wetere: I raise a point of order, Mr Deputy Speaker---in answer to the member's question, I will tell him in Maori or English on television at any time.

WINSTON PETERS: I am delighted to have that challenge taken up. Every time I have asked Television New Zealand why it has not allowed

a debate on the most crucial matter in New Zealand politics today the representatives reply---and they have no cause to lie, those paragons of justice and presentation: ``The Minister of Maori Affairs does not want to debate with you, Winston.'' Those people are telling the truth. The Minister should not come emboldened in the House today.

Hon. K. T. Wetere: Did you guys hear that?

Hon. Jonathan Hunt: I raise a point of order, Mr Deputy Speaker.

WINSTON PETERS: They can't take it.

Hon. Jonathan Hunt: It is not a matter of being able to take it, or not. I draw to your attention, Mr Deputy Speaker, that the member has spent 2 or 3 minutes on the point. If he persists, it is a responsible course for the Minister to reply. I suggest that the member be asked to return to the debate.

Mr DEPUTY SPEAKER: There has been a discussion away from the Bill, and I suppose that I should blame myself. The matter has been drawn to my attention, and I remind members once again that they should confine their speeches to the Bill before the House. The point has been well made that if members will, as it were, excite other members, disorder is likely to arise. I shall go no further than that, but I encourage the member on his feet to return to the Bill as soon as he can so that we can have a relevant discussion on the matter.

Mr McLean: I raise a point of order, Mr Deputy Speaker. I draw attention to the behaviour of the Minister of Maori Affairs. He walked down the gangway of the House, looked up at the press gallery, and waved and shouted to the journalists. As I understand it, it is grossly disorderly for members from the floor of the Chamber to involve strangers in the gallery in the debate, as the Minister was trying to do.

Mr DEPUTY SPEAKER: I confirm that members in the House are not allowed to address people other than other members of the House. I thank the member for raising the point.

WINSTON PETERS: I did not raise the matters that I seek to rebut tonight. They were raised by other members. I shall try to address those matters, because that is the heart of the issue. This is a face-saving exercise by an embarrassed Government that has sent more Maori people on to the dole queues than has any other Government in the history of this country, bar none.

Hon. K. T. Wetere: I raise a point of order, Mr Deputy Speaker. The Bill is not about unemployment. You have already asked the member to return to the Bill. I ask you to bring him back to the Bill again.

WINSTON PETERS: Speaking to the point of order, Mr Deputy Speaker, I point out that the central issue---by way of advertisements of the Minister in relation to the Bill---is that the Maori people have rights to their assets and to an economic future. That is the argument being stated all round the country. I refer to that central issue because it goes to the core of the Bill.

Mr DEPUTY SPEAKER: The member may be right, but I am required to give my attention solely to the debate before the House. The contents of the Bill are clear---they are the State-owned enterprises assets and the application of the Treaty of Waitangi to them. Speakers' Rulings state that members must confine themselves to the Bill before the House as printed. I appreciate the member's point, and that he is rebutting remarks made previously in the debate. However, I point out to him that for as long as I have been sitting in the chair there has not been a discussion on employment. I rule that that matter is not appropriate for him to raise, because it has not been mentioned.

WINSTON PETERS: I see what is going on here, and that is fine by me. I shall address the paragon of constitutional virtue, who went up and down the country in 1984 boring the Rotary clubs, and who claimed in 1987 and tonight that the Maori people had been consulted. When

the Bill was introduced he said: ``...Maori land claims are specifically dealt with in a new clause 22CA. That has been the subject of consultation with the Maori people. It has been the subject of a recommendation made by the Waitangi Tribunal, and, in all respects, the Bill ensures that the rights of people to make claims under the Treaty of Waitangi Act are no way prejudiced''. We should not be having this discussion tonight, because this Bill was not and is not necessary. However, the cavalier Labour Government, which is thoughtless, incompetent, and without vision, has brought tensions in race relations to their present height. Race relations will worsen because the Government will not listen. It is immature in Government and inexperienced, and that fact is proved every day in Maori politics.

Hon. K. T. Wetere: Ha, ha!

WINSTON PETERS: There is no use in the Minister laughing. I shall demonstrate what went wrong. On 11 December 1986 I moved an amendment that would have obviated the need for this Bill. I wanted the proposed new clause 22CA(1) amended to insert the words ``or after'' after the word ``before''. However, the Deputy Prime Minister, who runs tackle for the Minister of Maori Affairs, said that the amendment was not needed. He said that the Maori people had been consulted and that the Government had spoken to them. His speech, which is reported in Hansard, Volume 476, at pages 6192 and 6193, should be thrown back in his face.

After the Court of Appeal case 3 months later, when the Government was flattened in the court by the Maori Council, he had the audacity to say that the Government welcomed the findings. What hypocrisy; what camp; what double-speak and double-talk! On the one hand, the Minister put all of the force of the law and the armoury of the taxpayers' finances against the Maori people, and when he was decked, and flattened, and kneecapped he turned round and said he welcomed the result. Who can believe that?

Paul East: The Minister's a good loser.

WINSTON PETERS: Show me a good loser, and I will show you a loser. He will be a loser in 2 years' time. The Maori people and the country will not be deceived in this way. No amount of public relations campaigning will fool the people. The Minister of Maori Affairs would do better to apologise humbly to the Maori people rather than to come here talking fustian to a House that is not listening and a public that has long grown silent and bored by his meandering words.

Hon. K. T. Wetere: They'd never have listened to the member.

WINSTON PETERS: I moved that amendment. It would have obviated the Bill. My colleagues supported me in that amendment, but there were 36 votes against it. Those votes included that of the member for Northern Maori, and he should apologise to his people for that. He should have said: ``The member for Tauranga, who is one of you---he is from Tai Tokerau---he has a good amendment and I should have supported him.''

Hon. K. T. Wetere: The member is not welcome in that area.

WINSTON PETERS: The Minister must not say that I am not from Ngapuhi---that would be a grievous insult. My relations, who are legion, will come down to tell the Minister of Maori Affairs that I am one of them. The Minister of Maori Affairs voted against my amendment. He does what the Whips tell him to do. He speaks in the House and expects the people of the Ngapuhi, the Ngati Whatua, the Ngai Tahu, and people from all round the country to believe that he is awake and doing things for the Maori people. He is not alert to their needs and concerns. One language spoken is in the House---the language of politics and performance---and the Minister of Maori Affairs does not speak it. The one language of politics is results, and the Minister does not speak it.

Hon. K. T. Wetere: The member should keep his hands down.

WINSTON PETERS: The Minister of Maori Affairs should not tell me to keep my hands down. After 4 years he still will not show up and debate with me on television, and he is wise not to. The Deputy Prime Minister had the audacity to claim on 11 December that the Maori people had been consulted---they were not consulted. The proof of that came 3 months later, with the biggest injunction this country has ever seen, which was paid for by the taxpayers. The Deputy Prime Minister marshalled all of the taxpayers' financial accounts against the Maori people and he was beaten, yet he stated in his press release: ``I am delighted with the result.'' What does that make of him and his colleague the Minister of Police? It means that they are dupes for power. They are not concerned about people and race relations.

I have never seen race relations in this country in the state they are in at present. I had never dreamt that it was possible, but each month it gets worse. Ideas that were once thought but never spoken are now being spoken by people, and they mean them. The problem will get worse for us as a country, because we do not have an option. It is either all of us---3 000 000 New Zealanders---against the world, or we will fall back into a Third World economy and social environment. What is the response by the Minister of Maori Affairs to the comments made by the member for Hamilton East that were reported in the New Zealand Herald of 2 March 1988?

Hon. K. T. Wetere: The member doesn't expect me to believe the New Zealand Herald, does he?

WINSTON PETERS: Did you hear that, Mr Deputy Speaker?

Mr DEPUTY SPEAKER Order! I want to bring to a conclusion the air of tension that seems to be developing. I particularly ask the member for Tauranga if he would contemplate Speaker's ruling 54/5: ``It is accepted that the constant asking of questions needling a member who does not have the floor, leads in the direction of disorder, and is out of order.'' As I understand the member's speech, he is asking the Minister of Maori Affairs to respond. He is asking him what he thinks of a quotation made by another member. I draw it to the member's attention that not only is that practice referred to in Speakers' Rulings, but that it is out of order in that context.

WINSTON PETERS: You will have to bear with me, Mr Deputy Speaker, and understand what the legislation states. One thing it does state is that there will be no right of appeal from the tribunal. In the annals of this country's legal history, that is an extraordinary absence of omission from any legislation, but nevertheless it is in the Bill.

In the New Zealand Herald of 2 March 1988, the member for Hamilton East said that Government members of Parliament are planning a compromise on controversial Maori land legislation that will restore a right of appeal against some Waitangi Tribunal decisions. I am asking Government members what has happened to the public relations promise purveyed around New Zealand at that time: ``Don't worry, you'll have a right of appeal and some status before the tribunal.''

What has happened to the promise made in the New Zealand Herald on 2 March? The proposals were revealed during the hearing of the submission from Tasman Forestry Ltd of Rotorua on the Treaty of Waitangi (State Enterprises) Bill. The Government does not give a damn about consistency and proper law. It does not give a darn about the acrimony that is building up in race relations, and that is exacerbated day by day with legislation of this kind. When I ask what will happen to the so-called promise made by the member for Hamilton East, I do not hear a word---not a mutter, not a syllable. Nobody is visible now. They are all under the benches. They do not want to respond.



Government members do not want to answer the serious questions about the legislation before us and the long-term and fundamental effect it will have on the shape and form of race relations. That is the issue tonight.

The Bill has a certain future. The Government will force the Bill through with its majority, but it is playing with fire and the signs are all round New Zealand today. The signs are in the correspondence Government members receive, and they are in their Bill books. Government members should read the tenor of their correspondence and see the kind of hatred that is building up, because this kind of legislation has got out of hand. There would be no need to debate this legislation if Government members had but listened. Government members ignored the warnings about fishing rights and we got the Muriwhenua decision. They ignored the warnings about the State-Owned Enterprises Act and now we have the Treaty of Waitangi (State Enterprises) Bill. Yet, Government members continue with more promises and with incapable performances.

Hon. David Butcher: The National Government had 9 years and did nothing.

WINSTON PETERS: One thing the National Government did not do was reorganise the State services so that 80 percent of the people who were fired were Maori---and today 70 percent of those people do not have a job. That is a recipe for social violence and disaster. If the Minister of Energy went north to Whangarei he would find that one out of two Maori people leaving school does not have a job.

Hon. David Butcher: The member's Government put them in hock.  
[Interruption.]

WINSTON PETERS: I tell that milksop kid to shut up and keep quiet; this is a matter that concerns people who are concerned about the future of this country.

Mr McClay: The honourable milksop.

WINSTON PETERS: The Minister should go back to Hawke's Bay where one out of three Maori people is unemployed, and tell them that.

Hon. Jonathan Hunt: I raise a point of order, Mr Deputy Speaker. Members of Parliament are entitled to be called members or honourable members. The comments made by the member for Tauranga are out of order.

Mr DEPUTY SPEAKER: Members should refer to each other as honourable members, and by that term only.

Hon. Jonathan Hunt: I raise a further point of order, Mr Deputy Speaker. The same comment was made at least twice by the member for Waikaremoana, and I suggest that he, similarly, should come to order. The tone of the debate was good when the House discussed Maori issues last week. If we could proceed with better behaviour it would be helpful to members and to the people.

WINSTON PETERS: For my part, Mr Deputy Speaker, I apologise to the Minister of Energy.

Mr McClay: I'm sorry, too.

WINSTON PETERS: The Bill will not work. It cannot work, because there is no time-frame in relation to the lodging of claims. According to the Minister of Maori Affairs there are 3000 potential claims to come before the tribunal. The tribunal is dealing with at least one claim a month. One would have to be talking about the famous Nazi Reich of 1000 years to achieve any settlements in the case of those applicants who will make claims under the Treaty of Waitangi.

The policy cannot work. The Government does not have the compensatory capacity in fiscal terms to pay off the Maori aspirations it has so wantonly built up. It cannot work when European status has been denied because people are Europeans. They have no status before the tribunal, although they will foot the bill as

taxpayers; they have no rights of appeal, no matter how negligent some lawyer may have been in prosecuting the case for the taxpayers. There will be no rights of appeal, and ultimately that is inconsistent with the Treaty of Waitangi.

I want to put to Maori people one of those matters---that is, the principle of the treaty. One of the taonga, one of the treasures of the Treaty of Waitangi, was peace itself. That was one of the fundamental principles, and I say to the Government that if it continues as it has done there will not be peace in this country, there will be race against race.

Today in Kaikohe, on the East Coast, Masterton, and parts of Blenheim and Marlborough, the signs of a Polaroid picture of race relations worsening by the day are starting to emerge. It is time to have care. It is time to have regard to what people are saying, because those arguments and that criticism is coming from right across the political spectrum. It is coming from across the racial spectrum. Maori elders have been saying what I am saying today. Those are not my words---they are theirs. Therefore the Opposition will oppose the Bill.

Dr GREGORY (Northern Maori): The conduct of Opposition members in the debate has been, at the least, disgraceful. Less than 1 week ago a debate took place on an issue that is considered to be of very great significance to the nation, and on that occasion Opposition members behaved in a most statesmanlike manner. I wonder whether their performance on that occasion was not a smokescreen for all of the bitterness, the hate, and the scaremongering that we have heard in the House today.

Winston Peters: I raise a point of order, Mr Deputy Speaker. I am rather surprised that both the Minister of State, whose sole job it is to raise points of order in the House, and you, who are chairing the House at present, are allowing that member to refer to a past debate in the House of only 1 week ago. Standing Orders preclude that practice, and I ask that the member be requested to debate the issue before the House.

Hon. Richard Prebble: The member's too sensitive.

Winston Peters: I am not sensitive. We must have one rule in the House, not two.

Mr DEPUTY SPEAKER: The member is quite right. Members may not refer to speeches, or remarks, or contents of previous debates. I think the member was in order, although some questions may be raised about what he was saying. For that reason I suggest to the member that he come back to the Bill, in the same way as I shall encourage other speakers who are still to make their contribution to this debate to keep to the subject of the debate.

Dr GREGORY: Let us recapitulate on some of the issues that have been raised and that only distantly relate to the Bill, but that need a response none the less. Opposition members have kept referring to the performance of the Government on issues that relate to the Treaty of Waitangi, and also to race relations in this country. I believe that one can take aboard several historic occasions that were raised, which give the lie to much of what has been said thus far in the speeches made by Opposition members. It is true that the first major land march made to Wellington was headed by a lady from my part of the country. Interestingly enough, I believe that the particular petition and document brought by that land march was handed to the member for Tamaki, who was the Prime Minister at the time. So a land march took place, and the results of it ended up in the hands of the National Government, but those results were then virtually buried until the present time.

We heard the member for Tauranga make a disgraceful speech

tonight. I felt uncomfortable about the way in which he presented his case on the Bill, because I also happen to be from Tai Tokerau, and I would like to think that the country will realise that the performance of that member is not representative of most of Maoridom in Tai Tokerau. I believe that the attempts at iwi division---that is, playing off one tribe against the other---and the use of scaremongering tactics, such as the issue of race relations in relation to so many events that have happened recently, are actually an insult to the debate and to the Bill.

I mentioned the land march. We can go from that topic to consider the Motunui incident and the way the National Government was forced into a position---largely by the pakeha members of that region---to act in producing legislation, which the National Government did not do much about. We have seen the positive actions that this Government has taken: the creation of the Waitangi Tribunal. The Government has been prepared to deal with the issues that relate to the treaty.

Unlike the member for Tauranga, I believe that that is the blueprint that will provide the eventual peace that he talked about, and the kind of race relations---the Utopia---the hope for which we all share, but which can happen only if we have a plan, and a plan that began initially with good will which I maintain still exists. If we continue in that light I have no fears for the future---unlike Opposition members, whom we hear talking about bad race relations, and who rub that particular irritation on the racial issue in the hope of winning a few more votes at the next election. I believe that they will lose votes.

The Bill is timely. The steps taken that culminated in the Bill demonstrate that many of the comments made by Opposition members are totally erroneous. The Treaty of Waitangi Act and the State-Owned Enterprises Act represent actions taken by Labour Governments. A Labour Government had the courage to include section 9 in the Treaty of Waitangi Act, as a result of which the follow-on from the Court of Appeal case led to a decision that resulted ultimately in the Bill we are debating. The decision of the Court of Appeal was not defeat for the Crown, as the member for Tauranga suggested it was. In fact it showed that the State-owned enterprises policy could go ahead consistent with the treaty, and therefore was a positive step, as demonstrated by the Bill before the House.

The issues I want to raise in relation to the Bill---the ones about which Opposition members tried their utmost to create an atmosphere of distrust and to give erroneous details to the public---relate to the matter of the possibility of people losing their land. The Bill relates to a specific section of Crown land only, and that is land that comes under the jurisdiction of State-owned enterprises. I want to reinforce what was said by the Deputy Prime Minister---namely, that it is that land alone that is affected by the Bill. It is not true---and some Opposition members keep stating such fears publicly---that the pakeha will lose their freehold land.

Thus the Bill relates to a specific type of land---Crown land that comes, or has come, within the jurisdiction or the likely control of State-owned enterprises. That is an aspect of the Bill that I should like to reinforce to the House, and to the public, in order to play down the fears that Opposition members have constantly been irritating in an attempt to create an atmosphere of distrust. It is essential to do away with that kind of distrust if we are to seek a society of which we can be justly proud.

The matter relating to the right of appeal was frequently raised in the submissions made to the select committee, and it is a matter that needs to be clearly stated again. The Bill relates to Crown land that comes within the ambit of State-owned enterprises. At the same

time we must reflect on the Treaty of Waitangi---the document that gave protection to the Maori people on the historic occasion in 1884. The ambit of the argument goes back to the two groups that were involved in the historic signing in 1840---namely, the Crown and the Maori people. The debate needs to be referred back not to individuals within the various communities to make appeal cases to the tribunal but, rather, to those people on one side to present their cases to the Crown so that the Crown will take up the matter on their behalf. That is consistent with the nature of the document that gave rise to the Bill.

The rumblings and inaccuracies from Opposition members in relation to the Bill are far from the truth. I hope that the member for Tarawera and other members who will speak in the debate will treat the Bill with the seriousness that is required. Many past debates on such topics have been on the basis of reason and sanity, and have shown a lack of the kind of emotion that can lead only to further divisions and the further destruction of race relations.

The Bill addresses an important aspect of the relationship between the two peoples. The matter of the right of appeal is not part of the Bill. The Crown acts on behalf of those people who have seen fit to present their actions, and the decision of the Waitangi Tribunal in those cases will be definitive. A period of 90 days is provided in the Bill to give the two parties an opportunity to consider the decision that has been made by the tribunal, and perhaps to make separate deals or resolutions in a particular case without a final decision having to be made by the tribunal. Those measures are positive aspects of a dynamic society and they allow both groups to interact. That is a lesson that the Government has learnt, and I hope that Opposition members will have learnt that when parties are prevented from taking part in the debate, such a position can lead to later difficulties.

It can only be beneficial to society, that the Government has addressed in this positive manner the issues relating to the Treaty of Waitangi. The Bill before the House has arisen out of the good will of the Court of Appeal---and under its scrutiny---to ensure that a resolution was achieved. That has been done as a result of the good legislation introduced by a Labour Government. In cases in which land has come under scrutiny by the tribunal the question of a memorial will apply, and the circumstances under which that memorial may be removed are contained in the appropriate clauses of the Bill. I am glad that members on both sides of the House have settled down. I am not saying that they have settled down because of the nature of my speech, but I hope that it is because of the serious nature of the Bill.

The Bill before the House contains some modifications that make it historic and unique legislation. I must admit that it may not yet be perfect, but the opportunity to consider some of the issues, which may arise only as a result of the cases that may come before the tribunal, will surface. That will happen, and---despite the laughter of one of the Opposition members---that is a way of testing legislation. No one in the House can say that they can produce the perfect Bill. While the Government has gone a long way towards addressing many of the issues that are relevant to the Bill, time will determine whether the legislation needs to be improved. That aspect of the Bill will be minimal in the future.

Hon. M. L. Wellington: Bad luck---the member's running out of things to say.

Dr GREGORY: The member for Papakura could learn from the kind of legislation that is introduced, because in the past he has virtually denied the existence of a being such as a Maori person. One need refer only to some of the legislation with which he was involved to

realise the nature of that member---the ostrich-like, head-in-the-sand mentality that he had in relation to such legislation.

The Bill covers some important aspects of race relations. It affects several Acts; it has given rise to changes to---for example---the Treaty of Waitangi Act, the State-Owned Enterprises Act, and the Legal Aid Act. Opposition members have said that the Waitangi Tribunal is under siege at present with the work-load that is before it. That is certainly a matter that the House will consider, and Opposition members will no doubt hear about that in due course.

One thing leads to another, and it is to be hoped that members will have the will and the ability to keep up with the extent of the legislation that this Government has before it. The Government started in relation to the position of the Treaty of Waitangi. It observed the lackadaisical attempts---or non-attempts---by Opposition members even to consider the issues. They have expressed fears because the Government has seen fit that some recompense should be achieved by a host of legislation, which has been debated throughout the land.

We now have another important segment of legislation to deal with the Treaty of Waitangi and to bring about the kind of society of which we can all be rightly proud. I am sure that the arguments put forward by Opposition members---we have heard little of them so far---can only reinforce the stance that the Government has taken. I support the second reading of the Bill.

WARREN KYD (Clevedon): I was glad to hear the member for Northern Maori say that the Bill was not perfect, because he expressed a great truth. The Bill is so filled with pitfalls that it is a darned awful Bill. I am sure that that same member would describe the State Sector Act as ``perfect''. The member for Northern Maori went on in a sly and mischievous way to talk about non-Crown land not being affected, and Opposition members agree with him. He then said that Opposition members had travelled around---[Interruption.] I ask the member who is sitting behind me not to interject. That member always interjects on me.

Judy Keall: I do not.

WARREN KYD: The member does so---she did it the last time I spoke. The member for Northern Maori said that Opposition members are travelling around New Zealand saying that European land is being taken from them under the Bill. That is gross misrepresentation of the Opposition's position. Opposition members have not said that.

Dr Gregory: The member said that in the country.

WARREN KYD: I raise a point of order, Mr Deputy Speaker. I have never said that non-Crown land was affected by the Bill, as is alleged by the member for Northern Maori.

Judy Keall: What did the member say?

WARREN KYD: I did not say that.

Judy Keall: What did the member say?

Mr DEPUTY SPEAKER: Order! I am not sure what the member wants me to do. However, I point out to him that rare and reasonable questions by way of interjection are permissible. I think that the member for Glenfield was asking rare and reasonable questions. However, I detect that one or two members who are sitting near the member for Clevedon are interjecting when they should not be doing so.

Rt. Hon. Geoffrey Palmer: I raise a point of order, Mr Deputy Speaker. I do not mean to cause difficulty. However, did I hear the member for Clevedon take a point of order against himself?

Mr DEPUTY SPEAKER: It is unusual.

Hon. J. H. Falloon: Speaking to the point of order---

Mr DEPUTY SPEAKER: I am not sure that there is a point of order to which the member can speak.

Hon. J. H. Falloon: There is---the Deputy Prime Minister raised one.

Mr DEPUTY SPEAKER: Order! As I understand it the member for Clevedon was using the point of order procedure to draw my attention to remarks made by the member for Glenfield to which he took exception. I simply tell him that she was using a form of interjection that was rare and reasonable, and that she was in order. The member can challenge what she said, but that is not a point of order.

WARREN KYD: Opposition members have not said that, because there was no need to say it. Unfortunately, people have the misapprehension that their land is affected, and that causes them a great deal of concern. They have expressed their concern to me, and I am sure that they have also expressed their concern to Government members. The Maori people are claiming 70 percent of the land, and most of the claims of the groups that appeared before the select committee relate to land other than Crown land. Their evidence did not relate only to Crown land that is being given to the State-owned enterprises. There is a great deal of public misapprehension in New Zealand about that matter, and that misapprehension has not been caused by Opposition members or by the news media.

The member for Northern Maori said that the Bill should be considered unemotionally. People find it difficult not to be emotional when they envisage the possibility of hydro-electric dams and forests being removed from Crown ownership and placed in Maori ownership. It is not surprising that people are expressing their emotions---it would be very strange if they were unemotional. The Treaty of Waitangi is unique to New Zealand. It is a point of great honour that when New Zealand was annexed by the Crown there was---[Interruption.]

I raise a point of order, Mr Deputy Speaker. I am being interrupted by interjections from members who are sitting on the cross-benches next to me. Those members frequently raise points of order if Opposition members interject when they are speaking, yet they are the worst offenders.

Mr DEPUTY SPEAKER: Order! The member is entitled to be heard in silence, if that is what he is asking for.

WARREN KYD: I am asking the Government members who are sitting on the cross-benches not to interject.

Mr DEPUTY SPEAKER: I understand the point the member is making. Members should realise that it is a tit-for-tat circumstance. If they interject from the area in which members from both sides of the House sit, they may find themselves on the receiving end of interjections at another time. I ask members to be aware of that position.

Hon. V. S. Young: I raise a point of order, Mr Deputy Speaker. The member for Clevedon, by way of point of order, has twice had to draw your attention to interjections from members who are close at hand. It would be appropriate for you to point out to members who are sitting close to the member who is speaking that if they want to interject the practice that is followed in the House is for them to retreat from that position, and to interject from a greater distance.

Mr DEPUTY SPEAKER: I am not sure that I know about that particular practice. However, there is a convention that I have already drawn to the attention of members who are sitting in the block of seats from which the member for Clevedon is now speaking. It is not on for those members to interject when their neighbours are speaking, because they might find themselves on the receiving end of interjections on another occasion.

Hon. M. L. Wellington: They never speak.

Mr DEPUTY SPEAKER: Order! I ask the member for Papakura not to interject and comment on my rulings---[Interruption.] Order! That remark is totally out of order.

WARREN KYD: The Treaty of Waitangi was designed to protect not only the Maori people but all of the people of New Zealand. I rather like Professor Kawharu's translation of the Maori version, the second article of which states: ``The Queen agrees to protect the Chiefs, the sub-tribes, and all the people of New Zealand.'' The third article states: ``The Queen of England will protect all the ordinary people of New Zealand, and will give them the same rights and duties of citizens as the people of England.'' I think that is the way in which the treaty should apply---not just to the Maori people, but to everyone. My concern in relation to the Waitangi Tribunal is that it is asked to apply a very narrow interpretation that is inconsistent with the treaty, and to apply it only in a Maori claim context.

An important aspect of the Treaty of Waitangi is that the Crown is sovereign. The Queen is sovereign in New Zealand, and, even though the Maori people have the right to alienate the land, the Queen is sovereign for better or for worse. Even if things were done that were wrong, that does not necessarily mean that they should be reversed. The Queen has the power to do things that may in the course of history appear wrong later, but those things should not necessarily be overturned. The Government, rather than the Waitangi Tribunal, should be dealing with those Crown claims. The tribunal should make recommendations, and the Crown should make the decision. The Bill is a face-saving exercise. It prevents the Government from having to make the decision by passing that responsibility to a tribunal, and thereby it saves the Government from possible public odium. The Government has created the problem, and it is right that the Government should solve it. It should not pass it to some tribunal that represents probably a minority of the people.

The issue has to be looked at in a fair and reasonable context. Things that were done seven generations ago need not be totally reversed today. Without doubt the tribunal has the power to do so, but it is inappropriate and wrong to give wide and binding powers in such a matter to a tribunal. Until recently the tribunal has been recommendatory, but now it is given the power to make binding decisions. In fact, it is being given the power to rewrite history, with no right of appeal and with only one remedy: the return of land. The jurisdiction of the tribunal is wide, and all that it has to do is to say that something is inconsistent with the treaty and it can, after following a certain procedure, order the return of land. There is no doctrine of precedent, and the tribunal can rely on the widest feelings of its members. There is a saying that when the colours clash in a judicial matter a decision tends to be made in accordance with background and upbringing. New Zealanders are concerned that the Waitangi Tribunal will decide claims that, after all, affect everyone. There are no checks and balances on its decisions, and there is no right of appeal. The right of judicial review is very narrow indeed---it applies to perhaps 1 percent of cases, and only if there is total excess of jurisdiction. No one can deny that the tribunal has the power to decide those matters, and it will be very difficult under the right of review for any tribunal to overturn those decisions.

Large tracts of land involving many billions of dollars, and some of the largest claims ever to have been made---possibly the largest ever in courts of law---are affected. The matter is too important to be left to one tribunal with such wide powers of reference and with so little to guide it.

The Government has created the position. When the Waitangi Tribunal was set up people had the power to ventilate their

grievances, and not many claims were brought. However, the State-Owned Enterprises Act, which set up the State-owned enterprises, was then passed, and the Deputy Prime Minister guaranteed that Maori claims would not be affected. Manifestly and obviously, he was absolutely incorrect in saying so. The State-Owned Enterprises Act contains too little safeguard of Maori rights. A horrendous mistake was made that has cost New Zealand millions of dollars in legal fees, and it will cost more because it has caused a surplus of claims. More than 100 claims are to be made. The issue has been raised to a level that it did not formerly have, and only the Government is to blame for that having happened. It is obvious that the matter has gone beyond that of Crown land, because Maori people have since brought claims for other than Crown land---land that they had not dreamt of claiming before. The matter has got out of all proportion, and that is what worries us today---the Government is inflaming issues and creating problems. It is important that the jurisdiction of the tribunal be kept very narrow, but it is very wide indeed.

The tribunal has several faults. First, I consider the terms of reference to be a problem. The tribunal has the power to decide whether something is inconsistent with the treaty. If the tribunal decides that it is inconsistent, it may order the return of land. Those are very, very broad terms of reference. They are being applied to State-owned enterprises land at present, but people are worried that it might extend to other land---that is the fear of New Zealanders. The tribunal is also too slow. It has handled 28 claims in 14 years. There are now more than 100 claims, and more claims are coming. It will probably take some 30, 40, or 50 years for the claims to be decided. I know that the Crown has extended the membership of the tribunal, and that is obviously so that the work-load can be doubled. However, it still seems that it will take about 30 years before the claims are decided. The next generation of Maori people will largely miss out on their entitlement because of the lengthy period of time that the tribunal will take to settle the claims. If there is an excessive number of claims---and there is a large number of claims at present---it could take 50 years. The matter is too important to leave for so long. I want some mechanism put in place that will result in decisions being made sooner. I am concerned that the Waitangi Tribunal will not do so. Parliament's objective should be to decide those claims very quickly indeed. The issue is causing worry amongst the Maori people, and it is causing very high expectations. It is causing concern amongst those people who are not Maori, and those people who are Maori.

Mr DEPUTY SPEAKER: The member is widening the debate. He is discussing membership of the Waitangi Tribunal, its terms of reference, its effectiveness, and so on. In debating the Bill members are asked to concentrate on the matter of the State-owned enterprises and the obligations of the Waitangi Tribunal in relation to assets belonging to them. The member should not widen the debate in the way he is doing.

WARREN KYD: No, I am criticising the Bill for conferring powers on a tribunal that is already overloaded, and that will be unlikely to cope with the large variety of claims. As I have said, the decisions bind the Crown. That is dangerous. It is the Crown's problem. It has to look after the interests of 100 percent of the people. It is a very bad precedent to take that responsibility away from the Crown. There is no cut-off date. There is nothing to stop claims that have been decided from being brought again 20 years or 30 years from now. That omission adds to the concerns of people, and will encourage people to keep bringing claims that will not be dealt with promptly. Opposition members want to see an end to that state of affairs; we do



not want claims to continue over a long period of time. There is nothing in the Bill to stop people who have made an unsatisfactory claim from bringing further claims. The Bill encourages the proliferation of claims and the extension of the work of the tribunal. There is no proper way of measuring and cutting down the time it will take for claims to be decided.

I am also concerned about the likely duplication of work by the tribunal and the Maori Appellate Court. The Treaty of Waitangi Amendment Bill empowers the tribunal to decide matters of custom, which tribes live in which areas, and so on. Such claims could be presented to the Maori Appellate Court as well as to the tribunal, thereby duplicating much of the work being done by the tribunal, especially as judges of the Maori Land Court are likely to be on the tribunal. Several courts will be tied up, not just one, and that is a matter of concern that should be dealt with.

The right of appeal has been referred to. There is no right of appeal. One matter guaranteed in the treaty is the rights of British subjects. Those rights have not been preserved, because there is no right of appeal against the decisions of the tribunal, and because there is no right of representation of the State-owned enterprises or citizens who are affected. State-owned enterprises could be put out of business. It might be possible that the Electricity Corporation is unable to carry on its power-generating functions if, say, five of its dams revert to Maori ownership, yet it does not have any right of appeal or right to be heard.

Hon. Peter Tapsell: The member doesn't have the faintest idea about the Bill.

WARREN KYD: Yes, I have indeed. The Crown can mention the effect of a decision on a State-owned enterprise, but there is no guarantee whatsoever that the State-owned enterprise will be heard. One would have thought that there could not be any right of confiscation of a State-owned property without representation. Conservation groups and so on do not have the right to be heard. New Zealanders think highly of their conservation rights, yet conservation groups do not have any right of representation. Some people with claims before the tribunal already have maintained that they cannot be heard, and that is possibly right. People are worried that their cases will not be heard.

There is the matter of remedies. They are much too restrictive. The only remedy is the return of land. If that land includes hydro-electric dams that cost billions of dollars, the public could incur a colossal loss. Sure, the Maori people may have a moral right to the land, but they do not have a moral right to vast improvements that may have been made to it.

Hon. Peter Tapsell: That's covered in the Bill.

WARREN KYD: No, it is not, and that is the whole point. The value of the land could be low, but it may have a very valuable asset on it. That land could revert to the Crown, and the asset be lost along with it.

Hon. RICHARD PREBBLE (Minister for State-owned Enterprises): The honourable member for Clevedon, who has just spoken, has, with the greatest of respect to him, made a total fool of himself. Water is not covered by the Bill, but he proceeded to make a speech about it. If, for example, the member had taken note of the Rating Powers Bill he would have realised that dams are regarded by the court as machinery rather than as part of the land. The important point that I want to raise with the House relates to the proposed new sections 8D, 8F, and 8G in clause 4. Those members who have read the Bill will realise that those proposed new sections provide for application to be made to the tribunal for the removal of the memorial on the title

of land subject to the Bill. As one of the Ministers who negotiated the Bill with the Maori Council, I can say that it was recognised that there was a need for---[Interruption.] The member for Papakura can take a call if he wants to. It was recognised that there was a need for a procedure to remove memorials on land that is used by State-owned enterprises and that is not subject to a claim.

I shall give an example of such land. That the land was bought is well known. Captain Hobson bought Queen Street and the surrounding land. I put it to members that if he could sign the Treaty of Waitangi he could presumably purchase some land. It was clearly a purchase that was made on the understanding of at least one of the parties to the treaty---and, I suggest, on the understanding of both parties. The point I am making is that there are some important titles on that particular triangle of land. I shall suggest to the State-owned enterprises that application be made to have those titles cleared. In relation to the good will that exists to make that kind of deal apply, it is important---

Hon. M. L. Wellington: How can it be good will with this Minister?

Hon. RICHARD PREBBLE: The agreement is the result of good will. It is important, for example, that the State-owned enterprises receive clear titles to their Queen Street properties, just as it is important to Maori people that land owned by the State-owned enterprises that they are not legally entitled to be identified and returned. I say to Opposition members that that is the crux of the Bill. Several Opposition members have said that somehow or other it is essential for the State to hold on to some land to which it does not have good title---indeed, that it is vital that it keeps it. I put it to members that that is nonsense and absolute rot. That land should be identified and returned to the Maori people. The process may take some time, but I do not think that it will take as long as was suggested by the previous speaker. But, so what? People either believe in the rule of law---that the Crown ought to act honourably---or they do not. Members on this side of the House believe that the Crown ought to act honourably, and that is why the Bill is an honourable attempt to resolve the matter. When it clears the titles of the land for which it is recognised that the Crown paid good money and has good title to, the State is as entitled to the same rights as the other party to the treaty and to the agreement. I make it clear that it is important that those titles be cleared.

Mr Graham: Why?

Hon. RICHARD PREBBLE: It is important because those pieces of land, especially those in the centres of our cities, have a high value, and that will affect the effectiveness of the State-owned enterprises. In relation to most of the land claims, the land is of relatively low value.

Mr Graham: What difference does it make to the State-owned enterprises? None at all? They have the title with the caveat, so what difference does it make?

Hon. RICHARD PREBBLE: That is true. The honourable member may well be right. Perhaps the market will decide, that because the claimants are fully compensated, it makes no difference. If that is so, it shows that the market is very enlightened. Others have suggested that a memorial on the title may act as a discount of the land value. As Minister for State-owned Enterprises I should like those titles to be cleared early, and that would reduce the fears expressed by some Opposition members. I wanted to say that in the House so that it is recorded in Hansard, and so that members will know that those issues were discussed with the Maori Council. The Government basically said that it would like Maoridom to identify the real claims so that the tribunal could concentrate on them, and that it would also be helpful if matters not subject to a real claim could be cleared. Sections 8D,

8F, and 8G include a procedure that protects the position of possible Maori claimants, and that enables the Crown's enterprises to carry on with business. I say to the House that that procedure will work. I do not believe that the fears expressed tonight are legitimate.

Mr Graham: Laborious!

Hon. RICHARD PREBBLE: It may well be laborious, but so is justice.

Mr DOUG KIDD (Marlborough): I am glad to follow the Minister for State-owned Enterprises, because tonight he seems to have given a new slant---a ministerial gloss, at the very least---to what the House understood it was doing, and what, indeed, it is required to do---that is, to give effect to an agreement entered into without the House being consulted. I refer the Minister to clause 4, which inserts the proposed new section 8A. It states that the tribunal, in considering land claims brought by Maori people, can award land when it considers that that is the only appropriate way to compensate for prejudice caused to the claimants, or for policy, practice, act, or omission inconsistent with the treaty. I use as my example the Ngai Tahu claim, which is yet to be resolved, but I have been following press reports on it---I make no judgment on that claim whatsoever, or its likely outcome. As is the position elsewhere, various tribal groups have claimed offence, or prejudice, or actions inconsistent with the treaty, that have made them suffer prejudice and loss during the years. They seek that the tribunal find that their claim is justified, and then make recommendations. The Bill enables the tribunal to say, for instance, that the offence caused---the prejudice suffered---was so significant that it cannot be properly dealt with and met unless there is some award of land, whether or not there are other awards, as well. It seems to me that at that point the tribunal can cast about and say, ``Well, the Crown is possessed of these lands. We think it appropriate that those lands be awarded to the tribunal claimant.'' I do not think that anyone would argue that that is the general understanding of what the Bill is about.

The purpose of the agreement and of the Bill was that, in the process of allowing State-owned enterprises to get on with the job---to get title, and to fix things up---some way had to be developed to enable the Maori land claims to reach through the incorporation of those State-owned enterprises and their assumption of ownership, so that that land could in part be used in settlement of an award in relation to an acknowledged claim. So far so good. The Minister has now said in the House: ``Well, if the Crown got a particular piece of land by paying good money, and got good title, that piece of Crown land ought not to be available to be considered for award in settlement.'' That is a new idea in relation to this matter, and the Minister put it forward as a matter of good will on the part of the Maori people that they should go along with early applications to remove caveats in relation to such pieces of land. I should be interested---and tonight's debate may provoke some response from those people involved outside the House---in knowing whether that is the real understanding and intention of the matter. When I say ``the intention of the matter'', I mean the intention of the parties that entered into the agreement in the face of the proceedings before the Court of Appeal. Perhaps even more important than those parties---because in effect they were acting on behalf of many iwi---is whether the many claimants up and down the country believe that that is the nature of the deal. I should be interested to receive information on that, and to have some response to the Minister's conception of the matter before we proceed to the Committee stage.

The nature, flavour, and quality of the whole arrangement seem to be somewhat different. Just because a piece of Crown real estate of

high value now moves over to a State-owned enterprise---to use one example---seems to be very good reason that it should not be let out of consideration for award in a settlement. It might go substantially towards meeting a proper and bona fide claim, whereas other properties of the Crown might be able to provide only a less satisfactory settlement in terms of trying to get a particular claim resolved for all time. So tonight a new dimension appears to have been quietly and cunningly introduced into the debate, about which I should like to hear further comment from other parties before we go too far with the Bill.

I should like to consider the real impact of the measure, particularly in terms of the effectiveness of the continuation of the activities of those State-owned enterprises, which are supposedly busy, efficient, make large profits, and pay lots of taxes and dividends to the Government to help fund its deficit. I still have difficulty in understanding how Land Corporation and Forestry Corporation, both of which are possessed of very large areas of land for commercial purposes that require substantial investments to develop, are able, with any confidence at all, to move forward on the commercial basis on which they were supposed to have been launched. They must be inhibited commercially, and substantially inhibited, in that process. We have learnt---and I presume the committee had the information available---of various deeds and memoranda of agreement between those corporations and the Crown that set out what is supposed to happen. I do not happen to have the agreements of Land Corporation and Forestry Corporation, so I shall refer to one or two of the others.

I refer in the first instance to the Telecom Corporation agreement. Honourable members will be interested to know that that agreement was entered into some time ago, although I do not have the date before me, on the basis that the Treaty of Waitangi (State Enterprises) Bill 1987 would receive the Governor-General's assent without any amendments being made to the Bill as it was introduced on 8 December 1987. Parliament is just a rubber stamp. The Crown can go off and make deals and arrangements everywhere, and it is signed, sealed, and delivered that Parliament in no wise can have any input into the matter---that it is just a heap of junk as an institution. Honourable members ought to know that. I wonder whether others feel as I do.

I turn to the agreement in relation to Government Property Services as it relates to the Bill. If any of those high-value pieces of city real estate are caught in an award by the tribunal, and the Minister has not effected the release of the caveat---the Government is obviously contemplating that it could happen---Government Property Services is to be compensated. What is to happen is that the taxpayers will have to spring money to compensate Government Property Services for the loss that it will suffer because one of its properties has been handed over to a Maori claimant. Presumably that money will be filched back by the Government to disappear into the Consolidated Account to help fund Government expenditure, which the Government has not shown much ability to control. What kind of circus is that?

The Electricity Corporation has a very interesting arrangement to contend with under its agreement. It presumably contemplates that some dams, lakes, or penstocks, and all the other assets tied down, might come into the hands of a Maori group of claimants after an award by the court, or I am sure it would not have been mentioned in the agreement. The Crown---dear old muggins taxpayer---is to cough up to Electricity Corporation by way of taxes to compensate it, for goodness' sake, for the costs that it incurred, or the revenue loss suffered, in relation to any claims that might turn up within 35

years. So perhaps someone has some idea of a limit on this measure. Opposition members have been asking repeatedly whether there is a limit. Ought there to be one? Opposition members have argued that there should be, and it seems that there might be one here. However, perhaps it is not so, after all. What it suggests is that Electricity Corporation believes that it will recover from the consumer of electricity the amount that it has paid for the hydro and other electric plants, and also recover its return on outlays as well as the outlays themselves within 35 years. That reveals something interesting about power prices. I shall not pursue that matter tonight, but it raises question marks in relation to comments about future electricity prices.

If Electricity Corporation has to give up some of its generating capacity and real estate in the next 35 years, dear old muggins taxpayer has to cough up. One can profitably go through all of the agreements that were entered into on the assumption that Parliament, laid back with its feet in the air, will let it all go through, and cannot, could not, and will not make any alteration to the legislation as introduced. The Government has an arrogance that defies belief. It is that kind of action that has so often, throughout the history of the country, led to the prejudice and denial of rights that results in the type of mess that we are in today in relation to so many issues affecting Maori people, not least of which is the fisheries issue.

We have before us in the Bill book today the pretty version, setting out the long lists of Acts of Parliament that have caused offence, deprivation of property, and grievance that have come to be redressed. Where do we get to with the Bill? The agreement was entered into, and described in detail in the preamble to the Bill, in the face of court action between the people on behalf of the Crown---including considerable ministerial input, no doubt---and the claimants before the court. The Executive came to Parliament and said: ``We've signed this up, we've got to get the court off our back, and enact this.'' That is a serious state of affairs for Parliament. I suggest that, before we get too far into this kind of position, a mechanism must be provided to give Parliament an input into what is happening. I know that, out there in the bureaucracy, Parliament is regarded as a bit of a joke and a rubber stamp, and it will take time to stamp out that impression. However, I suspect that Parliaments of this era are not quite as obliging as they were in former times, and that trend will increase.

I take the opportunity---because it is relevant to the line I am taking---to say that at the moment, down town, Crown representatives are sitting on a joint working party on fisheries and negotiating with Maori leaders. I do not want to hear that a new deal has been entered into, that a Bill has to be introduced, and that Parliament must legislate it, without Parliament having an input into the process. Parliamentarians must put their feet down. If I have my way---and if most people who know anything about fishing have their way---I would not be very happy about the Crown's line-up. I have no opportunity to vent those concerns as a member of Parliament---a legislator---but I say, in the face of court action, that the Crown entered into one deal and Parliament is told to legislate and shut up. However, down town, something else is going on at a different level. No one is more determined than I that Maori fishing rights should be sorted out, and I have long been on record on that matter. However, Parliament, through some mechanism, ought to be involved with the Crown representatives at least. What brief do those people have? In the case of the land, the court action required a response, and that developed its own momentum. The Crown was on its back foot as a result of its previous arrogance in bulldozing through the

State-owned enterprises legislation. We are not in the same mess yet with the fisheries matter, even though the Government nearly put the country in it.

Before Parliament---and I mean the people---is confronted with another fait accompli as a result of the actions of people who are accountable to nobody, representative of nobody, and who are spending other people's money and depriving other people of their rights or disturbing existing rights, this Parliament, if it has any spine, ought to demand some input. I demand both that and some response. The Deputy Prime Minister said---and as a fellow lawyer I am ashamed of him for using the argument---that there is no right of appeal on Planning Tribunal decisions. I suggest to him, or anybody else, that the Planning Tribunal has the right to determine an issue, and to make an award of property with a value of tens of millions of dollars, and I shall start taking notice of his argument. His argument is spurious and without foundation.

The very British law and sovereignty that came with the treaty demands that there be equality before the law, and that the rule of law prevail. The tribunals have often been warned that, in removing an injustice, another injustice ought not to be perpetrated. No tribunal in this land can determine an issue of property rights, and make an award for one party against another party that is not subject to review in a higher court. Certainly no court at first instance can make a decision to award damages and the restoration of property to the value of tens of millions of dollars, and I am disgusted that that has happened. It was also claimed that other people had no right to appear because it is a dispute between the Crown and the Maori people involved. Indeed, it is in terms of a finding about whether there is a case to answer and wrongs to be righted. However, there are other people who, from that time until final resolution and agreement, ought to be and must be included. Imagine a prospective award, or granting of Electricity Corporation assets, in which the corporation had no involvement except as a witness. That is pathetic and childish. It is not a diminution of Maori mana, because the Maori grievance has been determined at that point, but, in arriving at the settlement, other rights are directly and finally affected. It is a contradiction that, from that point on, those rights should be excluded, and I object to the spurious arguments that have been put forward on that issue tonight.

I am strongly opposed to the two important legal principles I have dealt with latterly being put into law without opposition being expressed. As we erode those principles, no matter how worthy the cause, we erode principles fundamental in this land, and once they are gone they are hard to get back, as the Maori people will be able to tell us. I will not go down that road without expressing my opposition with my vote tonight.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): I hasten to assure the House, as a member of the committee that heard the submissions and deliberated on the Bill, that the members who expressed concern about the lack of a right of appeal have not considered the equivalent status of other tribunals. It has been observed that there is no right of appeal against a recommendation of the Waitangi Tribunal. That is consistent with other specialist tribunals. I particularly mention the tribunal that is of equal relevance on similar issues---the Planning Tribunal. There is no right of appeal against a decision of the Planning Tribunal, either. Although there is no right of appeal in the Bill as reported back there is still a right for a party to proceedings before the Waitangi Tribunal to apply for a judicial review on the grounds that the tribunal has not decided a claim in accordance with proper legal

principles. Those provisions are in the Bill. It has been suggested in debate tonight that they were not included. I want to give the House confidence and security that the measures I have just described are in the Bill.

The Bill contains amendments to the Treaty of Waitangi Act, the State-Owned Enterprises Act, and the Legal Aid Act. I was a party to the Treaty of Waitangi Act as a Minister of the Crown at the time. The significant amendment to the State-Owned Enterprises Act---which has been referred to tonight as if it were merely accidental---is something that, to me, was inevitable. I personally sought the inclusion of the provision for such a measure, and it is contained in section 9 of the Treaty of Waitangi Act. The Court of Appeal, on hearing the case put by the New Zealand Maori Council, in its decision of 29 June recognised the pivotal and quintessential component in the measure that led to the judgment in relation to section 9. I refer to the Treaty of Waitangi Act 1975 and the short title of that Act. The Act states that wherever components of legislation and policy were inconsistent with the principles of the Treaty of Waitangi they would be the subject of legislative protection. That is what the Bill does. It reflects the spirit embodied in the Treaty of Waitangi and it is further statutory recognition of the principles of the treaty along with a raft of legislation introduced by every labour Government so far. I shall not go through them, as it is not appropriate in this debate, but from 1936 to 1988 Labour Governments have introduced statutes that have sought to protect the spirit embodied in the treaty.

I refer now to the two key provisions in the proposed new section 8A of the Treaty of Waitangi Act contained in clause 4, and the proposed new section 27B of the State-Owned Enterprises Act in clause 10. The proposed new section 8A of the Treaty of Waitangi Act in clause 4 provides that if the Waitangi Tribunal finds that a claim is well founded it has power to make a binding recommendation that any land, or interest in land, transferred to a State-owned enterprise should be returned to Maori ownership. The proposed new section 27B of the State-Owned Enterprises Act enables the Government to give effect to the tribunal's recommendation. It provides that after a recommendation of the Waitangi Tribunal any land or interest of land---the added words detailing an interest of land were put in throughout the Bill by amendment in the committee---transferred to State-owned enterprises can be resumed by the Crown and returned to Maori ownership. The proposed new section 27A of the State-Owned Enterprises Act in clause 10 ensures that purchasers of land from State enterprises have knowledge of the claims that can be brought in respect of that land that would result in the return of the land to Maori ownership. That is done by placing a memorial on the title to that land that provides that the land is subject to resumption by the Crown.

Part I contains amendments to the Treaty of Waitangi Act. The key provision is the proposed new section 8A in clause 4, which enables the tribunal to recommend that land, or an interest in land, transferred to a State enterprise should be returned to Maori ownership. It is in compliance with the requirements of the ruling of the Court of Appeal and it is consistent with the spirit of the Treaty of Waitangi.

It is important again to stress the facts that have been given by the Minister in opening the debate tonight. First, that only land, or an interest in land, transferred to or vested in a State-owned enterprise under sections 23 and 28 of the State-Owned Enterprises Act can be resumed by the Crown. This means---and it is an important point to stress---that leases or other interests in land granted by the Crown before the transfer are not subject to resumption;

secondly, that private land and Crown land, other than that transferred to or vested in State-owned enterprises, are in no way affected by the provisions of the Bill; thirdly, that when the Crown has transferred only a limited interest in land to a State-owned enterprise, only that limited interest can be resumed by the Crown. That fact has not always been understood. It has been the subject of acrimony, and the misunderstanding has caused the suggestion that there would be some kind of explosion in race relations over the matter. I hope I have already disabused the minds of those who have those concerns by giving the authoritative observation, as a member of that committee.

In the proposed new section 8A(6) in clause 4 of the Bill as reported back, it is emphasised that if interests in land are not transferred to a State-owned enterprise under section 23 or vested in a State-owned enterprise under section 28---two sections that have just been referred to by Opposition members---they cannot be resumed by the Crown. I repeat those points that have been brought forward by Opposition members, who have been unable to accept the most germane points of the Bill as reported back. It is important that those components be rectified before the debate concludes tonight.

I therefore conclude that, just as the Treaty of Waitangi Act 1975 carried in its short title the affirmation that any matters that were inconsistent with the principles of the treaty would be the subject of claims made to the Waitangi Tribunal---and well I remember that Act, which was finally discussed and passed through the House on 10 October 1975---so the sentiment has been reiterated with consistency in the Bill. Finally, therefore, as a member of the committee and a member for one of the four Maori electorates, I extend to the Ministers involved and concerned---particularly the Minister who was the principal negotiator on behalf of the Government with the council, the Minister of State-owned Enterprises---the satisfaction of the Maori party to the contract as directed by the Court of Appeal on 29 June. It has been to its satisfaction that the Bill as amended has been introduced to the House.

Mr GRAHAM (Remuera): The Bill is the result of a settlement reached between the Crown on the one part and the Maori Council and Sir Graham Latimer on the other. That claim had been brought because the Crown proposed to dispose of land. Such disposal would have defeated the rights of Maori claimants to recover that land if they could establish their claim. The Maori Council was successful in its application to the Court of Appeal. Negotiations took place; a settlement was reached---behind closed doors, one might say---and Parliament is being asked to endorse the settlement that was reached between the Crown and the Maori people. We must ask ourselves whether Parliament ought to approve and pass the legislation.

The settlement effected means that land can be now transferred to the State-owned enterprises---indeed, it can then be transferred on further to individual buyers or companies that want to acquire that property. However, the land now is bought with---in effect---a caveat against the title, which puts the buyer on notice that a potential claim might still lie against that land. From the point of view of the Crown that enables it to get the sale proceeds from the State-owned enterprises---and that, clearly, is a budgetary matter of some concern.

It is true, as the Minister for State-owned Enterprises pointed out, that an application to remove the memorial or the caveat can be made by the State-owned enterprises or anybody else. However, it seems likely that an application to the Waitangi Tribunal to clear the memorial would take some time.

What of the claims that the Maori people might have against those



lands? Under the legislation the claims are made to the Waitangi Tribunal, which is authorised to hear any evidence it likes, whether it be legally admissible or not. The right to appear before the tribunal is restricted to the claimant, the Minister of Maori Affairs, any other Minister who makes application to the tribunal to be heard, and any other Maori person who might have an interest in that particular piece of land. Neither representatives of the State-owned enterprises nor the ultimate purchaser of the land from the State-owned enterprises are entitled to be heard. That creates a rather bizarre position in which the only people who can take part in determining what is to happen to the land are the claimant, the tribunal listening to the action, the Minister of Maori Affairs, any other Minister of the Crown, and any other Maori people.

I find that position a little strange, because the land may have passed through several hands. Many decades could have passed before a claim is filed, and a person may have been the owner of the land that is subject to the memorial or caveat for years; a claim may then be lodged, but that person has no right to be heard. I should have thought that the Government did not need to restrict the right to appear before the tribunal as it has done when it settles the issue with the Maori Council.

Nevertheless, the tribunal then proceeds to its deliberations, and it makes an interim recommendation. The tribunal can say that it has found a claim to be well founded and that its interim recommendation is that the land should be returned to the Crown, and through the Crown to the Maori claimants. If after 90 days a settlement has not been reached, under the Bill the interim recommendation becomes a final recommendation. That is important, because in the proposed new section 27B in clause 10 the right to order the return of land to the Crown, and through the Crown to the Maori claimants, is restricted to a recommendation being made, which is then confirmed. It does not necessarily follow as a matter of interpretation that an interim recommendation that has become a final recommendation is the same as a recommendation that has been confirmed. For what it is worth, that seems to me to be a matter of drafting, which should be considered in the Committee of the whole House.

The most extraordinary provision in the Bill relates to the end of the deliberations of the tribunal. After the 90 days has elapsed, and after negotiations that may or may not have been successful, the tribunal can make what is clearly a binding finding and a binding recommendation. That finding could be that the Government of the day has no right to deny the finding and the recommendation of the tribunal. It is the tribunal that decides whether the land, either still owned by the State-owned enterprise or by some other individual, should be returned to the Crown and through the Crown to the Maori claimant. The Crown pays compensation, the caveat is removed, and the land is returned to the Maori claimant.

One of the more interesting provisions in the Bill, apart from the question of the finality of the recommendation and finding, is the question of the compensation that is to be paid to the person who may have owned the land for decades. The proposed new section 27C in clause 10 provides that the memorial or caveat on the title shall not be taken into account in assessing the compensation to be paid by the Crown to the owner.

I was interested in the view of the Minister for State-owned Enterprises, because I share his concern that the placement of a caveat on the title will discount the value of the land. For example, if a person wants to buy a piece of property worth \$1 million, although that piece of property may have a caveat or memorial against the title and may be reclaimed by the Maori people, that person may say: "I do not think that the piece of land is worth \$1 million. I

shall pay only \$800,000.' After negotiation, he buys the land for that amount. If a claim is lodged some time later, or immediately thereafter, by the Maori people and a recommendation that the land be returned to the Maori people is made, the valuer of that land must ignore the memorial that has been placed against the title, and may value the property at \$1 million. The result of that procedure is that there has been a profiteering potential for a person to pick up a magical \$200,000 profit. I am not sure that that possible scenario has been considered by the Government. I invite the Government to reconsider clause 27C in relation to the valuation, and the way the owner is to be compensated.

Comments have been made about the lack of appeal procedures in the Bill. It is not the normal kind of court action that would be subject to an appeal to the High Court, the Court of Appeal, or the Privy Council. It is a one-off, rather strange tribunal, which is rather like the Planning Tribunal. However, it is not of so much importance whether there is a right of appeal in the true sense of the word. What is more important is that the tribunal has enormous powers that it should not have. If those powers to make the final decision were not available to the tribunal, the issue of an appellate jurisdiction would not arise. However, the tribunal does have the final power, and Opposition members have looked in vain to see where a disgruntled litigant, who is affected by the decision, can go. The answer is, nowhere. That is a major problem, and a fatal flaw in the Bill.

Parliament must decide whether that is a fair settlement, and that settlement ought to be endorsed by Parliament. It is obvious that the Crown receives the money from the proceeds of sale of land to the State-owned enterprises. That is an important budgetary consideration. The Crown remains liable to compensate the owners, for the time being, in the event of a successful claim being filed by the Maori people. It is deferring that liability into the future, but it retains it. There is nothing wrong with that---it is a relatively fair settlement from the Crown's point of view.

However, 10 years or 13 years after the Treaty of Waitangi Act has been in force, I should have thought that any person of Maori descent who thought that he or she had a claim against land in New Zealand would have known about it by now. The claims should not be allowed to go on ad infinitum. I am surprised that Parliament has not had the courage to pass a law that places a statute of limitations period on the matter, and I fail to understand why that cannot be done. It is possible that the Committee will review that matter.

From the point of view of the Maori people, the settlement that was reached was highly successful. Their claims are totally protected, and they have come out of the settlement with the power---through their tribunal---to make final recommendations. The question simply is, why should Parliament allow the Government of the day, which has the final responsibility for resolving grievances, to delegate that power to somebody else? Why should Parliament allow the Waitangi Tribunal to have that binding power when the Government of the day should act in the best interests of all New Zealanders? The answer is clear. In its desire to obtain money from the sale of the State-owned enterprises, the Government was placed in an impossible bargaining position with the Maori Council. I can only congratulate the Maori Council, and Sir Graham Latimer, on their negotiating tactics. They have come out extraordinarily well. I do not blame them in any way for taking the Government to task. The Government asked for it and it got it.

However, the end result is that Parliament now has a Bill that it has to consider in the light of race relations as a totality. Is the Bill in the interests of New Zealand---all New Zealanders---and race relations? Is it fair and equitable, and does it provide a proper

balance? Is it fair that the tribunal should have the final say instead of the Government? I do not think that it is, and I do not think that New Zealanders by and large think that it is, either. Because of that, the Bill becomes unacceptable. The fear is that it will create even greater strain than exists at present, and I have no doubt at all that nobody in the House would want that to happen.

This is a time when much care, rational thinking, calm, and deep thought is required as Parliament seeks to do the right thing. I have serious doubts about whether the Bill is the right legislation at this time. I therefore join with the Opposition in voting against the Bill. However, in doing so, I know that there are still many problems and grievances to be resolved. I do not object to the attempts to try to reach a programme of events that will lead to the resolution of those problems, but members will be very foolish if Parliament is in effect negotiated out of what is right and proper and agrees to rubber-stamp a decision that abrogates the responsibility of Government and places it on somebody else in whom confidence is not quite so obvious. For those reasons I join with the Opposition in voting against the second reading of the Bill.

Hon. JONATHAN HUNT (Minister of State): I move, That the question be now put.

The House divided on the question, That the question be now put.

Ayes 45

Anderton; Bassett; Butcher; Clark; Cullen; Davies; Dillon; Douglas; Dunne; Duynhoven; Elder; Fraser; Gerbic; Gregory; Hunt; Jeffries; Keall; Kelly; King; Kirk; Marshall, C.R.; Matthewson; Maxwell, R.K.; Neilson; Northey; Palmer; Prebble; Robertson; Robinson; Shields; Shirley; Simpson; Sutton, J.R.; Sutton, W.D.; Tapsell; Tennet; Tirikatene-Sullivan; Tizard; Wallbank; Wetere; Wilde; Woollaston; Young, T.J.

Tellers: Austin; Sutherland.

Noes 26

Angus; Birch; Cooper; East; Falloon; Gerard; Graham; Grant; Kidd; Kyd; Lee; Luxton; McClay; McCully; McLean; Marshall, D.W.A.; Maxwell, R.F.H.; Meurant; O'Regan; Peters; Richardson; Smith; Storey; Young, V. S.

Tellers: Gray; McTigue.

Pairs

For: Braybrooke; Caygill; de Cleene; Goff; Lange; Mallard; Moore; Moyle; Rodger; Scott.

Against: Anderson; Banks; Burdon; Carter; Gair; McKinnon; Muldoon; Munro; Shipley; Williamson.

Majority for: 19

Motion agreed to.

The House divided on the question, That this Bill be now read a second time.

Ayes 45

Anderton; Bassett; Butcher; Clark; Cullen; Davies; Dillon; Douglas; Dunne; Duynhoven; Elder; Fraser; Gerbic; Gregory; Hunt; Jeffries; Keall; Kelly; King; Kirk; Marshall, C.R.; Matthewson; Maxwell, R.K.; Neilson; Northey; Palmer; Prebble; Robertson; Robinson; Shields; Shirley; Simpson; Sutton, J.R.; Sutton, W.D.; Tapsell; Tennet; Tirikatene-Sullivan; Tizard; Wallbank; Wetere; Wilde; Woollaston; Young, T.J.

Tellers: Austin; Sutherland.

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Tellers: Gray; McTigue.

Pairs

For: Braybrooke; Caygill; de Cleene; Goff; Lange; Mallard; Moore; Moyle; Rodger; Scott.

Against: Anderson; Banks; Burdon; Carter; Gair; McKinnon; Muldoon; Munro; Shipley; Williamson.

Majority for: 19

Bill read a second time.

The House adjourned at 10.22 p.m.

## **28 June 1988, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 489, pp4773-4777**

### **Treaty of Waitangi (State Enterprises) Bill (Third Reading)**

Third Reading

Hon. RICHARD PREBBLE (Minister for State-owned Enterprises): On behalf of the Deputy Prime Minister, I move, That this Bill be now read a third time. The Bill is an important Bill in the history of Parliament. It has unprecedented historical significance. It is to give effect to an agreement reached between the New Zealand Maori Council and the Crown in settlement of a case brought before the Court of Appeal. I can tell you, Mr Speaker, that the Bill went through the Committee stage with only minor technical amendments, and in its basic form is still intact. The Bill makes several amendments to the Treaty of Waitangi Act 1975 in Part I, to the State-Owned Enterprises Act 1986 in Part II, and to the Legal Aid Act 1969 in Part III. The effect of those amendments is to protect existing and likely future claims to the Waitangi Tribunal relating to land at present in Crown ownership, and also better to fulfil the objectives of the State-Owned Enterprises Act 1986, in particular those in section 9, which deals with the principles of the Treaty of Waitangi.

The Bill incorporates the spirit of the Court of Appeal judgment, which basically stated to the Crown that the Crown has an obligation to carry out actively its part of the Treaty of Waitangi. It also stated to the Maori partners to that treaty that the Crown should have the ability to be able to carry out Government policy. It is Government policy to run our businesses well; to run them as businesses. Therefore the House has agreed in the State-Owned Enterprises Act to the setting up of State-owned enterprises, and the Bill enables the Crown to administer the nine State-owned enterprises in an efficient and businesslike fashion, while at the same time totally protecting Maori land claims under the treaty. In the Committee stage I thought that most of the arguments raised were not raised with any great seriousness.

Winston Peters: With 6 months in a law firm, what does the Minister know about it?

Hon. RICHARD PREBBLE: I was one of the partners who actually negotiated the agreement. In the Committee stage the member for Tauranga raised several points that were totally spurious. I am not sure whether he knew that they were spurious---

Winston Peters: Typical arrogance. Tell the House about the Labour Electorate Committee in Auckland.

Hon. RICHARD PREBBLE: The member is now asking me to talk about

the Labour Electorate Committee. He does not want to talk about the issues, and confirm that he knows nothing about the Bill. In the Committee stage he spent most of his time being out of order and defying the Chair, and generally being abusive and rude. It is worth noting that at no time at any stage of the Bill has the Opposition said what its policy is, and at no time has it given any constructive options. All we have had from the Opposition have been comments to the effect that the issue is an important matter of State. Opposition members then proceeded to engage in petty partisan politics. That comment does not apply to all Opposition members---

Winston Peters: We want to talk about the Minister's credibility.

Hon. RICHARD PREBBLE: ---but it does apply particularly to the member who is interjecting. His general style of conduct in the Committee stage did him no credit.

Winston Peters: Nobody trusts the Minister on his feet. Even his own party members don't like him or trust him. He's the most unpopular member, for good reason.

Hon. RICHARD PREBBLE: By continuing to interject the member demonstrates the point I am making. He says that it is all a matter of popularity. Politics is not all a matter of popularity; fundamentally there are questions of principle. The Bill is a principal answer to a major problem facing New Zealand. The Government has put forward that answer by reaching agreement with the Maori people. Opposition members made silly points, and gave no policy or constructive options. They have no alternative to the Bill. On the third reading they can tell us one thing---in the Committee stage they voted against every clause. Would a National Government repeal the Bill? The House is entitled to know the answer to that question. If a National Government would repeal the Bill, what would it replace it with? The member for Tauranga has said that there should be one law for all. Are Opposition members saying that Maori people are not entitled to justice? The House would like to know the answer to that question. At no stage of the Bill have Opposition members given an indication of whether the Maori people can expect to get justice from a National Government.

The Bill is an important one. Not only does it have the backing of the Maori people and the Maori Council, but it puts into law and statute the rulings given by the Court of Appeal. The Government is a Government of the rule of law. It is prepared to uphold justice for all New Zealanders. It is saying to Opposition members that they should give up their somewhat strange approach to the Bill and tell the Government one way or the other whether they are in favour of justice for all New Zealanders. If they are in favour, finally, at the third reading, they should come together with the Government and vote for this important Bill.

Hon. J. B. BOLGER (Leader of the Opposition): I rise before my colleague the Opposition spokesman on Maori affairs because I must go to Government House as a patron of the 1990 commission that in 2 years' time will be celebrating in part the signing of the Treaty of Waitangi in 1840. I draw that point to the attention of the House because here we are 148 years down the track and this bumbling, incompetent Labour Administration is bringing in legislation not to enshrine the oneness, the unity, the singleness of purpose of New Zealand but to enshrine a law that will divide New Zealand. That is my answer to the Minister who has just spoken. The Opposition could support the Minister if the Bill had as its objective the unifying of New Zealand as one country, so that in 1990 we could all celebrate the signing of the Treaty of Waitangi 150 years earlier. Throughout the Committee stage the Government showed that it is struggling to come back from defeat; the defeat---I remind the Minister who preceded me---was in the Court of Appeal.

The Minister said that the Government was a Government of the rule of law. It passed legislation in Parliament in the dead of night. It was taken to the High Court, and subsequently to the Court of Appeal. It fought the New Zealand Maori Council with every legal manipulation in its control. It lost inside the High Court, then was humiliated and had to go back to the New Zealand Maori Council to seek an agreement---an agreement that is encapsulated in the long title of the Bill. Yet the Minister has the audacity to say that the Government is seeking to bring together legislation to unite New Zealand.

The whole genesis of the Bill was the bumbling incompetence of the Government. It brought in section 9 of the State-Owned Enterprises Act, and, as usual, as we are doing now, the legislation was charged through in the dead of night under urgency. The Government did not comprehend the importance of section 9, and was brought up only when the Court of Appeal said, ``Stop. You can't continue down that road. You must go and seek a solution.' ' The solution the Government sought is one that is not acceptable to New Zealanders in total, because it is divisive. The Government is not bringing New Zealanders together as one people with this Bill. Instead---unfortunately, I have to report, and the Committee recognised the fact---the Bill is dividing New Zealanders. Parliament must accept its prime responsibility of governing in the interests of all New Zealanders. That is the underlying responsibility of Parliament. However, it was made clear in the Committee that the Bill was divisive.

The Government, in seeking to scramble out of the hole in which it finds itself with the State-owned enterprises legislation, has created another mess and another problem. It has brought into the public arena the real question of equality before the law. Is there to be equality, or are there to be laws that favour one group or another? The Minister for State-owned Enterprises knows that the Bill does not provide for equity for all parties, because some parties will be given no standing, irrespective of their association with the events in the court or the tribunal. The country is reaching a sad state in the development of its history when Parliament, by the weight of the Government, has to force through under urgency a Bill that is not in the interests of all New Zealanders.

Hon. Mike Moore: That kind of speech will keep them in the Opposition for years.

Hon. J. B. BOLGER: That Minister has consistently avoided having any position on the matter of race relations in New Zealand. He has sought to make sure that he does not have to make a decision on that issue, because he wants to be on both sides of the matter in the Labour Party camp. He is unwilling to reach and state a firm conclusion. Like the whole of the argument inside the caucus on economic policy, the Minister wants to be both for and against the matter, as was one of his more famous predecessors---Sir Walter Nash. I guess that the Minister seeks to be the heir to Sir Walter Nash---neither for nor against difficult questions. The House must be for or against issues, and must vote on them. The House should not proceed with the Bill in its present form. The Bill does not resolve the central issue in a manner that will unify the country; it does quite the reverse. In the Committee it came through with absolute clarity that the Government should pause in its proposal to transfer Crown land over which there is a claim, and leave the land in Crown ownership until the matter is resolved---that would keep the status quo intact, and would allow outstanding issues to be resolved---rather than set up procedures to transfer the land. Such procedures will put such a tag on the transfer that inevitably even greater tension will be created in the community. If the legislation is passed in its present form---

Trevor Mallard: We'll protect Winston.

Hon. J. B. BOLGER: [Interruption.] The noisy member for Hamilton West may speak after me, if he wants to.

Hon. Richard Prebble: We're all Win supporters over here.

Hon. J. B. BOLGER: The Minister for State-owned Enterprises does not have supporters even in his own Executive, and he took his own Labour Party to court. He will probably want to introduce legislation with an equally Draconian effect to protect his political hide. He cannot even keep the peace in his own electorate, much less try to be the peacemaker of New Zealand. He is the Minister most unfit to have any responsibility for unifying New Zealand, because he cannot even unify the party political hacks who support him.

Hon. Mike Moore: I wouldn't pursue that argument, Jim.

Hon. J. B. BOLGER: I shall pursue that argument with great vigour, if the Minister wants me to. [Interruption.] It has been shown clearly throughout the debate that the Government does not have a clear vision of the way to unify the country. Instead, it is scrambling from one mistake to another, and from one disaster to the next. That process is alienating non-Maori New Zealanders from the cause that Maori people hold dear. It is alienating most New Zealanders, who must be part of any solutions to the problems that emanate from the Treaty of Waitangi of 1840. If the Government cannot devise legislation that meets the approval of the almost 90 percent of New Zealanders who are non-Maoris, a workable solution cannot be found. Clearly the Bill does not unify; it divides. The Bill creates fear, it causes tension, and it adds to the division that already plagues the country. The Government knows that the Bill is not good legislation, and that it should not proceed.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): Before the Leader of the Opposition leaves the Chamber I want him to pass the answer to my question to the next Opposition speaker. The Leader of the Opposition has not said whether a National Government would repeal the Bill if it were elected. If it did so, what would be put in place as an alternative measure? I specifically ask that question of the Leader of the Opposition, and all Opposition members, because the Maori people are entitled to know the answer. I await a reply.

Hon. J. B. Bolger: A National Government would have a balanced and proper court of law with equal rights for all New Zealanders.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN: That was not a proper answer and was not clearly given. The Maori people demand the answer to be given with clarity.

Hon. J. B. Bolger: The member can't get it clearer than that.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN: Returning to the Bill, I am pleased that this is the sixth time in the House that I have had the opportunity to talk about it. The Bill is essential to protect the position of Maori claimants and to ensure compliance with section 9 of the State-Owned Enterprises Act 1986. The Bill brings in safeguards, including the power for the Waitangi Tribunal to make binding recommendations, for the return to Maori ownership of any land or interests in land transferred to State-owned enterprises under that Act. The Bill also requires the Waitangi Tribunal to hear any claim relating to any such land or interests in land as though it or they had not been so transferred. That provision is critically important, as was section 9 of the State-Owned Enterprises Act. I do not know whether the House fully recognises the historical significance of the epoch-making history of the Bill, recognising as it does that anything in legislation permitting the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi has to ensure parallel safeguards to protect the position of Maori claimants. I do not know whether the House fully recognises that point. The first time those words were referred to was in 1932,

in a petition of T. W. Ratana, who sought statutory recognition of the treaty, and protection for Maori claimants over any Act that would be brought into force. That petition sought that nothing in any legislation would permit the Crown to act in a manner that was inconsistent with the principles of the treaty. That petition was brought into the House by my predecessor and was approved by the largest number of Maori signatories.

This Bill relates and harks back to significant history in the claim of the Maori people for justice under the terms of the Treaty of Waitangi---the absolutely fundamental basis, the kaupapa, of any Maori advocate in the House, and, indeed, my own kaupapa. Essentially the Bill establishes a system of safeguards for Maori claimants to apply after the transfer of assets to State-owned enterprises. Unsound inferences, assertions, and claims have been made by the Opposition that that action would create discord in the country. It will create discord to the extent that the country and its populace are insensitive and unaware of New Zealand history. To the extent that history is known and understood, no such claim could be made on the passing of the Bill.

The Minister who presided over the debate has been a principal negotiator, and I take this opportunity to express the profound gratification of the Maori people for the manner in which he negotiated the Bill, which has eminently satisfied the New Zealand Maori Council and Sir Graham Latimer. Many acts of justice will flow from the Bill, because it has set the required precedent. It has given the Waitangi Tribunal the power to make binding recommendations for the return to Maori ownership of any land transferred to State-owned enterprises under the State-Owned Enterprises Act. It will also enable the tribunal to consider the justice of a case, and, although the Opposition may not appreciate the component of justice herein because of the lack of historical perspective, I assure the House that justice is here, and justice delayed is justice denied.

Justice introduced by way of this legislation is timely. It has been introduced by a Labour Government, which has considered the claims and grievances of the Maori people more than any other Government in history has done. In the times of Labour Governments---the first, the second, the third, and this one---there has been the gradual effluxion of measures that have satisfied the Maori people. However, such measures may have been slow in passing through the House because of the intervention of National Governments.

The two key provisions in the Bill are clauses 4 and 10. Clause 4 gives the tribunal the power to make binding recommendations. The tribunal's recommendations may bring about the possibility of the resumption by the Crown and return to Maori ownership of the land. Attention has been drawn to the mechanism of placing a memorial on the title to the land, which action provides that the title is subject to resumption by the Crown. The key provisions, clauses 4 and 10, enable the tribunal to recommend that land or interest in land transferred to a State-owned enterprise should be returned to Maori ownership.

I have pointed out, and emphasise again, that only land or interest in land transferred to or vested in a State-owned enterprise under sections 23 and 28 of the State-Owned Enterprises Act can be resumed by the Crown. It is important to point out that leases or other interests in land granted by the Crown before the transfer are not the subject of resumption. That point has been the subject of misinformation spread by Opposition observers of the Bill, and that misinformation has caused a tremendous amount of pressure and concern by people who are ignorant of the specific clauses and power of the Bill. I want to correct that misunderstanding.



Clause 4 lists the persons who have a right to be heard as a party to the Waitangi Tribunal hearings in relation to claims to land transferred to or vested in State-owned enterprises. The Maori people who made submissions wholeheartedly approved of that provision. Neither the partnership established by the Treaty of Waitangi nor the practical issues should be interfered with or confused by the intervention of third parties.

The tribunal also has the power under clause 6 of the existing second schedule of the Treaty of Waitangi Act to receive any evidence that it considers necessary in order to deal effectively with the matters before it. The litigants---Maori groups---may apply for and receive legal aid, which was not previously available to them. In this way the Bill has recognised the cultural need of groups in the particular sociometry of applying in groups.

WINSTON PETERS (Tauranga): My first response to the member for Southern Maori and to the Government is that this Bill is not a Labour Government measure. It is not a Labour Government proposal; it is a consequence of the Government's ignoring the Opposition's sound moves on 9 December 1986 and consequently ending up 3 months later with the biggest land injunction in this country's history. The Government was creamed at court, and as a consequence Parliament is being asked to rubber-stamp an agreement arising from a court decision.

That is not the way Parliament works. It is not the way democracy works. It is not the constitutional convention of this country. [Interruption.] Parliament is being asked to pass legislation under those circumstances, and no amount of shouting and interjection will change the plain facts. The Government is doing what it is told, and Parliament is being asked to do what the Government was told. It is no way to run the country. It is not part of the constitutional convention and it is not part of the democratic history of this country. My second comment is that some Government members oppose the Bill.

Hon. Richard Prebble: Who?

WINSTON PETERS: The first member is the member for Titirangi, who said, as was reported in the New Zealand Herald---and as I quoted in the Committee---`It remains finally for the Government to decide whether to accept the tribunal's recommendations, and what compensation or remedy is given to Maori claims.' That was his position.

However, that is not what the Bill states. It states that a recommendation from the tribunal is mandatory for the Government to follow. There is no discretion, no opinion, and no decision-making power on the part of the Government. It is mandatory for the Government to follow the tribunal's recommendations. The member for Waitakere does not support it. The other day I was challenged in the House to prove that there were other Government members who do not support the Bill, and I said that I would not repeat a confidential conversation. However, at breakfast this morning---

Hon. Richard Prebble: The member's changed his mind.

WINSTON PETERS: Yes, I have changed my mind, but I do not go round repeating confidential conversations.

Hon. Richard Prebble: The member can't be trusted.

WINSTON PETERS: I would not repeat a confidential conversation even with my enemies. That is the way I was brought up; that is the way I was trained; that is the kind of conduct of the profession to which I belong. The Minister for State-owned Enterprises would not understand that. At breakfast this morning the Minister of Revenue told me to feel free to tell the House that he is in favour of scrapping the whole thing. I said that I could not repeat the conversation, but he told me to feel free to `tell them all'. He is

the second Government member who does not support the Bill. The third member is the member for Hamilton West.

Trevor Mallard: I'm here.

WINSTON PETERS: I mean the member for Hamilton East---the intellegent and sensible member, not the member with a cleft palate like a dog. I mean the member who talks some sense in the House. The member for Hamilton East has said that he will introduce legislation to give the citizens of this country the right of appeal. I have cited three Government members in that regard. The member for Hamilton East made those comments---which were reported in a newspaper article---when he went to the Hyatt Regency in Auckland to hear submissions on the legislation.

Government members have been frog-marched in here by the court and asked to rubber-stamp the legislation. It is being dealt with under urgency after 6 months of hearings and 51 submissions. The Government is steamrolling the Bill through Parliament, and that will not do. Not one official of the Department of Maori Affairs turned up for the Committee stage, and the Minister of Maori Affairs was not in the chair. That most insensitive of political creatures---the Minister for State-owned Enterprises, who has no support in his electorate---sat in the chair. He is the epitome of arrogance and ego. Opposition members know all about that Minister. He has to take his own party to court to get his way. Not one official of the Department of Maori Affairs turned up for the Committee stage.

Noel Scott: A legal adviser of the department was at the select committee.

WINSTON PETERS: I am talking about the Committee stage. The member for Tongariro should wake up. He is not with it. The member is never here. He gets the chance to make a speech once every 12 months, and thinks he has acquitted his responsibility. It is not good enough. The Bill should have been dealt with clause by clause, not part by part. The Bill does not allow any appeal rights. Never in this country's history has such legislation been passed in such a wanton manner. There is no status for 88 percent of New Zealanders.

Hon. Richard Prebble: The John Kirk of the National Party!

WINSTON PETERS: That is what he used to say, but he is not saying it any more; it is old hat. The Minister for State-owned Enterprises is insatiably jealous of me because I know him. I know what a shy, frightened boy he was at university. Now that he has been given power his whole personality has changed, and that is dangerous. He is the only person I know in this business who has undergone that experience. Members should watch him, as he is dangerous. Under the proposed new section 8C in clause 4 the taxpayers have no representative.

Hon. Richard Prebble: Why's the member's vote so low?

WINSTON PETERS: The Minister should wait until the next Heylen poll---I have more votes than those of Government members put together. If members read Part I of the Bill---new section 8I in clause 4---they will see that every year the tribunal will receive a report about the way the Government has treated recommendations made by the tribunal. The people of Waiheke Island, the Ngati Paoa, took their case to the tribunal and they received a favourable decision, as did the Evans family. The Evans family is a Maori family. However, after 2 years nothing has happened. Therefore one can forget about that provision's having any meaning.

Hon. Richard Prebble: What would the member do if he were in Government?

WINSTON PETERS: A National Government would have one law for all New Zealanders, one law for the family---New Zealand. It would not follow the segregationist, separatist, divisionist, revisionist, path of the present Government.

Hon. Peter Tapsell: Would a National Government repeal it?

WINSTON PETERS: If the Minister of Police wants to have a free-for-all about my political reputation, as he implied in the Committee stage, he has come to the right place. Where was he when I moved my amendment on 18 December 1986? The Minister voted against my amendment. Where was he when so many things were done to damage Maori people? He has not done anything about the number of Maori people who are unemployed. I could go on and on about that Minister's abysmal record, but I shall not; I shall come back to the Bill. The Minister of Police, who is an inheritor of the great Ratana pact of the Labour Party, could not do a damned thing about it. He walked into the Noes lobby and voted against it. He has the effrontery and the audacity to complain about my performance. That is why, when the Sunday News held a poll about the Maori members of Parliament who were effective, I beat him 5:1---and that is the newspaper that Maori people read. The performance of Government members is so bad that Matiu Rata will win three seats at the next election.

Mr Braybrooke: Ha! Ha, ha!

WINSTON PETERS: The member should not laugh; the member for Northern Maori knows what I am talking about. The whole political face of New Zealand is being rewritten because of the Government's cavalier attitude to Maori people.

Paul East: Mat's working for his people, unlike that member.

WINSTON PETERS: Yes, and I am the only Maori member who has congratulated him on that. That churlish bunch opposite would not congratulate him.

Hon. Richard Prebble: Such modesty is unbecoming.

WINSTON PETERS: It is not modesty, it is the truth.

Hon. Richard Prebble: There's a hair out of place, Win.

WINSTON PETERS: At least I do not have a head out of place.

Mr SPEAKER: Order! The member should come back to the Bill.

WINSTON PETERS: That picture of sartorial elegance represents the Auckland Central electorate. The Opposition does not believe in compromising the rights of members of Parliament. We are in accordance with the Standing Orders when we say that somebody from outside Parliament should not give riding instructions to members, and, above all, we will not rubber-stamp agreements arising from court decisions.

Opposition members will promote legislation that has regard to the whole of the family---New Zealand. We are many different families from many different origins, but we are one people. New Zealand does not have an alternative---either we meet the world's challenges head on, as 3 000 000 New Zealanders who are united together, or we will become a Third World country. The gagging and gurgling warbles of the Minister for State-owned Enterprises---who reminds me of a seal at Napier's Marineland---will not deter Opposition members. We are unequivocally opposed to the legislation---to the manner it arose, the way it has been put through the House, and the effects that it will have. The Bill will not satisfy the needs of the Maori people. Their salvation is in education, jobs, and welfare.

RALPH MAXWELL (Titirangi): Mr Speaker, I seek the leave of the House to make a personal explanation under Standing Order 171 about the claim made by the member for Tauranga in the House last night that I had called for the scrapping of the Treaty of Waitangi.

Mr SPEAKER: Is there any objection to that course being followed?

WINSTON PETERS (Tauranga): I raise a point of order, Mr Speaker. I have a problem in that I have here a headline that states, ``Scrap it''.

Mr SPEAKER: That headline may influence the actions of the member for Tauranga, but it is not a factor for the House to consider. I imagine that the member for Titirangi is seeking leave to correct

what the member quoted from that headline.

RALPH MAXWELL (Titirangi): I wrote an article for the New Zealand Herald calling for the Treaty of Waitangi to be, first, honoured, and, second, honourably retired and replaced with a fresh pact. The headline claiming that my article called for the treaty to be scrapped must remain the responsibility of the New Zealand Herald. It did not reflect the article. In the speech just concluded the member for Tauranga misquoted remarks in that article. He used a quotation to claim that I was opposed to the Treaty of Waitangi (State Enterprises) Bill. My comments in the section of the article the member quoted from directly related to the findings of the Waitangi Tribunal. Either the member cannot read, or he is reckless with the truth.

Mr SPEAKER: Order! There is no need for the member to venture further.

WINSTON PETERS (Tauranga): Mr Speaker, I seek the same privilege as has been accorded the member for Titirangi.

Mr SPEAKER: The member is seeking to make a personal explanation. Is there any objection to that course being followed? There appears to be none.

WINSTON PETERS: I did not misquote the member for Titirangi. I read the following extract from an article in the New Zealand Herald: ``It remains finally for the Government to decide whether to accept the tribunal's recommendations and what compensation or remedy is given to Maori claims''. I tried to make the point that if it remains for the Government to decide whether to accept the tribunal's---

Mr SPEAKER: Order! Having corrected the quotation that he used, or repeated it, the member cannot go on to explain what it means. The member's colleagues may certainly explain what it means as the debate works through, but under the Standing Orders the member cannot expand into debating material.

WINSTON PETERS: I conclude by saying that, having quoted word for word from the New Zealand Herald, I stand by the words I said.

Mr SPEAKER: Order! I will be calling the member's colleagues. He should not abuse the privileges in that way.

RALPH MAXWELL (Titirangi): The question is whether the member for Tauranga is able to continue, because there is a proper use of Standing Order 171, and there is a misuse of it.

Mr SPEAKER: Order! The member should resume his seat. I invite members to have a private chat some time to sort out the matter.

Hon. PETER TAPSELL (Minister of Police): During the Committee stage, and, I am bound to say, subsequently, it became patently obvious that few Opposition members understand the difference between a claim taken before the Waitangi Tribunal by the Maori people under the Treaty of Waitangi (State Enterprises) Bill and a claim that they see fit to take to the same tribunal under the Treaty of Waitangi Act 1975. Government members have set out---

Warren Kyd: We can't understand that.

Hon. PETER TAPSELL: I realise that the member for Clevedon cannot understand that matter, and I am sorry for him. Government members have been at pains to point out that the Bill gives effect to a mutually acceptable agreement reached between the Government, acting on behalf of New Zealand at large, and the New Zealand Maori Council, acting for Maori people---in particular, those Maori people who believe they may have a grievance. The Government has also made it clear that that agreement was made possible by the insertion in the State-Owned Enterprises Act by the Government of section 9. I make the point that that particular section of the Act was inserted after a very strong fight by my colleague the Minister of Maori Affairs to ensure that Maori interests were protected from beginning to end.

Not one Government member believes that the path in front of us will be smooth. There is not a single one of us who believes that we will not face problems in the future. However, the Government believes that the unification of Maori and European New Zealanders, and the future peaceful existence of our two peoples, is dependent on our ensuring that the laws of this country are based on justice and fair play. If nothing else, the Government is determined to ensure that there is justice in our time. Government members have said many times that we cannot correct all of the ills of the past, but that we will determinedly set out to correct those ills that we can. The Bill is one means of achieving that aim.

The Government has pointed out that claims under the Bill relate to particular and specific areas of Crown land as defined in the Land Act. It has made it clear that such claims do not include any land for which there is already a claim before the tribunal. They do not include any land that individuals at present hold leases for in which there is a right of total alienation. They do not include any land on which there is a deferred payment licence. The lands to which the Bill relates are a significant, very specific, and quite small area of Crown land---not lands of the Crown---and claims made in relation to them under this Bill are in contradistinction to any claim brought under the Treaty of Waitangi Act 1975, which relates to any land in New Zealand. The Government has also made it clear that under the Bill it will accept the ruling of the tribunal when it appears before that tribunal on behalf of New Zealand. I point out that the Bill relates to a very small area of land. However, it should be noted that in relation to any claim made under the Treaty of Waitangi Act 1975, the tribunal has only a power of recommendation, and the ultimate decision will be taken by the Government.

Mr Graham: Why the difference?

Hon. PETER TAPSELL: The difference is very clear. The Bill relates to a specific area of Crown land; the Treaty of Waitangi Act 1975 relates to all New Zealand land, including privately owned land. Government members are saddened that some members---I suspect out of ignorance---have spread confusion and concern. No person in New Zealand---no individual Maori or European---who at present holds title to land is under any threat whatever, either from the Bill or from the Treaty of Waitangi Act 1975. Not one individual who at present owns a legal title that is registered in the Land Transfer Office is under any threat whatsoever.

Some members mentioned that no representations will be made by the Government in relation to any claim brought to the tribunal. A Minister---the Minister of Maori Affairs, or any other Minister---is entitled to appear on behalf of the Crown should he see fit. It so happens that all of the land at present considered by the Bill is my responsibility as Minister of Lands, and it will be my decision as to whether I appear before the tribunal on behalf of the Government and the people of New Zealand; should I think fit, I will do so.

It was also suggested in the Committee stage that the Bill places an unreasonable encumbrance on the ability of the State-owned enterprises to deal subsequently with the land, and that the State-owned enterprises will be prevented from alienating land. The Government made it clear that no State-owned enterprise is bound to alienate the land---indeed, most of them will not, but if one chooses to do so it will be in the clear knowledge that that land may be subject to resumption, and that that fact will be taken into account in the price of the land. Equally, any person who chooses to purchase from a State-owned enterprise land that is subject to the Bill does so in the clear knowledge that that land may be subject to resumption subsequently.

I am bound to point out that during the Committee stage Government

members expressed concern and, I think, sadness that, whereas the majority of Opposition members knew no better, the member for Tauranga did know better. If he did not know better, he ought to have made certain that he had fully informed himself so that he did. Maori members on this side of the House are well aware that that member is having great difficulty. He is a Maori member representing a general seat. He is under great pressure. Maori members expressed great sadness that, knowing the effect of the Bill, by his submissions during the Committee stage he deliberately set out down the path of fostering racial animosity and fear amongst people, not with any intention of clarifying matters relating to the Bill, but solely to curry favour with the general electorate in Tauranga. He has lost votes steadily over the past two elections. He knows that those numbers will continue to decrease unless he sets out deliberately to foster racial animosity and fear among European New Zealanders, and he has done so consistently from North Cape to the Bluff. Can members think of anything else for which that member is renowned? He is mentioned in every newspaper in the country. He has gone around the country fostering racial animosity and encouraging European New Zealanders to be concerned and fearful of the outcome, even though he knows very well that there is no justification for that attitude. Many Maori people on every marae around the country I have visited know very well what that member is up to. The Maori view of him is that he is the latest and least quisling of them all.

Mr SPEAKER: Order! I require the Minister to withdraw that comment.

Hon. PETER TAPSELL: I apologise and withdraw, Mr Speaker.

PAUL EAST (Rotorua): That was a disgraceful speech made by the Minister of Police. It was a disgrace and a discredit to him and to the race that he is supposed to represent in the Chamber. He has turned into a rubber stamp for Government policy. When the Minister of Justice tells that Minister to jump, he asks ``How high?'. He will come into the House and rubber-stamp anything, and that is what he is doing in relation to this Bill. I know that in his heart of hearts he does not support the Bill, and that is why we heard that bitter, vindictive attack from him.

I know that many Government members do not support the legislation, and that if every member could vote on the Bill the way he or she wants to it would not be passed into law. The member for Hamilton East has already stated in a newspaper article that he does not like part of the legislation, particularly the part that relates to the lack of appeal provisions. During the Committee stage Opposition members gave the member for Hamilton East---who is a lawyer, and who understands what a blow to our judicial system it is to set up a court structure without any right of appeal---the opportunity to vote against that provision. However, he was not prepared to back his public statements and join Opposition members in opposition to this totalitarian legislation.

The Bill is part of a long-drawn-out saga that involves the Government's incompetence in dealing with issues relating to the Treaty of Waitangi. The first mistake the Government made was in 1986, when it included a clause in legislation relating to the State-Owned Enterprises Act that required that the intention of the treaty be honoured. Government members had no idea what trouble that clause would lead to, although they were warned by the Opposition about the difficulties they would face. It was suggested to the Government that the legislation relating to the State-Owned Enterprises Act should not proceed in the manner in which it was drafted, but the Government forced the legislation through Parliament, and it has now returned to try to tidy up the mess that it has created.

The Bill is before the House because the Deputy Prime Minister, who is the Attorney-General, got towelled up by the Court of Appeal. I do not believe the Deputy Prime Minister when he says that he was pleased with the decision made by the Court of Appeal. If he was so pleased with that decision why did he fight it day after day in the Court of Appeal? He has been unable to answer that question in the House. How can he say that he wanted that result to happen when, day after day, his highly paid advocates fought against the very decision that was delivered by that court?

During the Committee stage Opposition members said that the measure had been dealt with in an arbitrary and totalitarian fashion. It started when the Government forced the debate in the Committee stage to take place part by part, so that the rights of the Opposition were severely restricted and Opposition members could not examine in detail what effect the Bill would have on many New Zealanders.

The Bill establishes a kangaroo court---nothing more, nothing less. It should be stopped in its tracks. It gives the Waitangi Tribunal the power to make judicially enforceable decisions---not recommendations, which it could make formerly, but final decisions. Will a court make the final, lawful decisions? No---and that is why the legislation is wrong. The tribunal is a Government-appointed body, not a court of law. That Government-appointed body will parade itself as a court of law, and it will make final determinations about which there can be no appeal. If the Government wanted to deal in that way with land relating to State-owned enterprises, why did it not allow a proper court of law to deal with the issues, rather than appoint a body? An even better solution would have been for the Government to govern, and to make the hard decisions about what will happen to taxpayers' property---not to foist those decisions on some tribunal it has appointed. The Government is running for cover in relation to Treaty of Waitangi issues. It is not prepared to make the final decisions. The Government is elected to govern, not to pass hard decisions to a tribunal in the manner in which it intends.

The Government has given its decision a cloak of judicial respectability by saying, ``We're setting up this body that is tantamount to a court.'' It is nothing like a court, and its officers are not judicially appointed. The people who sit on that tribunal can be hired and fired at the Government's whim. The Government has already toed the two National Party appointees off the tribunal. The Waitangi Tribunal is not a court---its members are Government appointees, nothing more, nothing less. It is an arm of the Executive. It is a Government advisory body that has been given the power to make final decisions. The Deputy Prime Minister cannot trumpet away the facts by saying that the Waitangi Tribunal is the next best thing to a court. If that were so, why did he kick some appointees off the tribunal and replace them with his own political appointees after they had been passed by the Labour Party caucus? It is clear that the Government has appointed a body and given it the judicial task of making final decisions about matters pertaining to the Treaty of Waitangi---not recommendations, as was the case previously, but final decisions.

This dictatorial and totalitarian legislation goes one step further: it denies any right of appeal, and that is a disgrace. I ask the Government what is wrong with allowing aggrieved parties to appeal decisions made by that tribunal. The right of appeal is sacrosanct in law. It is part of the foundation of the law on which New Zealand was built, yet the Government wants a Government-appointed body to make judicial decisions about which people are denied a right of appeal. The reason for that policy is that, unfortunately, it is not just Parliament that is making the

decisions. The Government has been kneecapped by the Maori Council. After the Government's case was lost in the Court of Appeal it had to scramble for some honour, so it has reached an agreement with the Maori Council, and is asking Parliament to rubber-stamp that agreement. Parliament is being asked to rubber-stamp a decision because the Government received a hiding from the Court of Appeal. Today is a sad day for anybody who has an interest in the constitutional conventions of this country. The Government has established a body, that it is passing off as some form of quasi-court of law, and any person who appears before that body is denied a right of appeal.

In fact, the right of appearance in front of that body is not open to all New Zealanders. If people are Maori, or if they can claim Maori descent, they will be granted the right of appearance before the tribunal, but the tribunal is opposed to the appearance before it of the other 88 percent of New Zealanders. Is it fair that 88 percent of the population, all of whom are New Zealanders, should receive a second-class deal before what is supposed to be a judicial tribunal? Is it fair that 88 percent of the population can have its assets stripped from it by decisions made by that tribunal without any right of appearance or any right of appeal? What kind of law is it that allows the majority of New Zealanders to have their assets taken from them without being granted the right even to appear in front of that tribunal? It is a disgraceful law.

Worse, the Bill deals with assets of considerable value, because it incorporates assets such as hydro-electric power-stations, which are worth hundreds of millions of dollars. Decisions made by the tribunal about such massive assets will have no right of appeal, and 88 percent of the population, from whom those assets may be taken, is supposed to remain quiet and sit on the sideline while the Government enacts legislation that allows its hand-picked nominees to take those assets from the people. That is why the legislation is wrong, and that is why today is a black day for anybody who has an interest in constitutional conventions. This sordid legislation should be thrown out, but the Government will force the Bill through by its weight of numbers. However, I know that if every member were entitled to a free vote on the issue the Bill would not pass into law. The Bill is the result of some major political and legal blunders made by the Deputy Prime Minister. He now wants to save his skin by putting in place a Bill that Parliament has had no part in.

TREVOR MALLARD (Hamilton West): I move, That the question be now put.

Mr SPEAKER: I am not inclined to accept the motion at this stage.

WARREN KYD (Clevedon): The Minister of Police tried to raise the level of the debate by asking for justice and fair play. That is exactly what the Opposition is seeking. The Bill denies justice and fair play, and it should be rejected by the House. I am glad that the Minister of Police raised that important point. Not only is it important that the nation has justice and fair play, but it is also important that the people recognise that they are getting justice and fair play. If the people do not believe that, they will not support the tribunal and that would be a disaster. There is no justice and fair play because the people do not recognise the tribunal as representing the interests of all of the people of New Zealand. At present, five out of seven members must be Maori. The tribunal is appointed by the Minister of Maori Affairs, and independent members---very distinguished members such as Paul Temm---have had to leave. That was not justice and fair play, and the people do not regard it as such.

The second point I want to make is that there is no right of



appeal, and one of the kingpins of British justice is that there should be rights of appeal to avoid kangaroo courts. Indeed, the treaty guarantees Maori people and the people of New Zealand the rights and privileges of British subjects. This court does not give people the rights and privileges of British subjects; it does not give them fair play, and that is what is wrong with the Bill.

The Bill does not give those people who are particularly affected and who will lose assets worth hundreds of millions of dollars even the right to appear. The State-owned enterprises have no right of appearance, and individuals who are affected have no right of appearance. Already there have been complaints that people who wanted to be heard before the tribunal were not heard adequately. That is why there is not justice and fair play, why the Bill is not recognised by the people as giving justice and fair play, and why the Opposition is opposed to the measure.

The Bill has a narrow perspective. It decides whether something is inconsistent with the treaty, and, if something is inconsistent with the treaty as it was written 150 years ago, the land and the improvements, which may be worth many billions of dollars, go back to the Maori people. Although that result might achieve justice for 12 percent of the population, it will not give justice to 100 percent of the population. The Bill ignores 150 years of history. That is not justice; it is not fair play.

The Minister of Police said that the Bill is altruistic legislation granted by a beneficent Government. In fact, it is shotgun legislation that has been forced on the Government because it was beaten in the Court of Appeal. The Government was acting contrary to the State-Owned Enterprises Act, the Maori Council had to take its case to the Court of Appeal, it was defended strongly---and I have no doubt that it probably cost \$1 million in taxpayers' money---before the Court of Appeal, and the Crown lost. That is the reason for the legislation---it is not the altruism of the Government and not the desire to look after the Maori people, but a shotgun at the Government's head.

I cannot help but note today that the Minister for State-owned Enterprises presented the Bill, and that the officials are not from the Department of Maori Affairs but from Treasury. Treasury is driving the Bill and it is using the Maori members to give it a good front. The Minister of Maori Affairs has had nothing whatsoever to do with the matter; it has been run by the Crown and the Minister for State-owned Enterprises. That is a disgrace.

I want to record that in the Committee stage Opposition members queried the fact---and got no answer---that the public works compensation will not be adequate. I suspect that that is deliberate. When the Maori people resume land, compensation has to be paid to the State-owned enterprises. The State-owned enterprises represent the people of New Zealand, because the people own the State-owned enterprises, and there is no adequate provision from the Public Works Act for that to take place. I mentioned that in some depth during the Committee stage, and I want it to be recorded that the compensation provisions are inadequate. When at some later stage it turns out that a vital and critical asset has been taken from the State-owned enterprises and has reverted to the Maori people, and the public cries that compensation was inadequate, the Government will have been warned. The Government has done nothing about that matter, and it did not answer the question when it was raised.

The Bill puts the State-owned enterprises in an unsatisfactory position. On the title of the State-owned enterprises a memorial will say that the land may be resumed pursuant to the Treaty of Waitangi (State Enterprises) Act. It is part of the Government's avowed intent to sell off the State-owned enterprises and get big prices for them

to reduce New Zealand's debt. What commercial buyer will pay a fair market price when it is read on the title that the land is likely to be resumed?

Paul East: They'll run a mile.

WARREN KYD: That is dead right. No commercial buyer in his or her right senses would pay a proper commercial price. When the Crown tries to sell off the Electricity Corporation to British Gas or a similar buyer it will not get a fair price with which to pay the debt, because only a fool would pay a proper commercial price. The Bill will have a further disastrous effect. The State-owned enterprises know that their land might be resumed---the Forestry Corporation, the Electricity Corporation, and the Coal Corporation all know that. What strategic plans can they make? What dams can be built in the knowledge that Crown land might be resumed at any time? What long-term planning can be made to get better deals for New Zealand consumers? The answer is that the Crown will be inhibited. The State-owned enterprises will be inhibited knowing that their land might be resumed. They cannot establish the forward planning and development that might be needed.

The Bill will inhibit New Zealand development, and in that respect it is a disaster. Not the tribunal but the Crown should be making the final decision. No doubt there have been cases in which Maori people have been duped and have not been given a fair go, but the Crown should decide that. New Zealanders should get fair play from the Crown, and not from a tribunal that the Government likes to treat as a court. The Crown should put its head on the block, not that of some face-saving tribunal. It is important that the issue be dealt with from the perspective of 100 percent of the population after 150 years of history, and not in relation to something that was written 150 years ago from a narrow perspective. It is vital that there should be a right of appeal.

The people who are affected, be they Maori tribes, hapu, or European, should have a right of appeal. The remedies are defective. The only remedy is the return of the land. The land might be worth \$1 million and the assets might be worth hundreds of millions of dollars, yet the State-owned enterprises will lose that asset---they will lose the whole amount, although the improvements have been made by the people of New Zealand during the past 150 years. New Zealanders will lose and there may be inadequate compensation. People should have the right to appear; that right is a part of British justice. Claims should have time-limits. The matter could rear its ugly head 50 years from now, and claims could be brought and upset people then. The matter should be dealt with rapidly.

The Bill should contain a sunset clause for bringing claims, and a sunset clause for determining claims. I am afraid that the Bill will be divisive. It will divide the people because they do not believe that they are getting fair play or British justice. In that respect New Zealanders have been failed by the Government, which has been forced into the Bill by a shotgun and against its will. The Government claims that it is beneficent and altruistic, and that it is trying to benefit the people and give fair play. In fact, Government members are trying to save their bacon and their faces at the expense of taxpayers. The Bill is a total disgrace. The Opposition wants fair play for the Maori people, but the Bill is not the way to achieve it.

Mr GRAHAM (Remuera): The Treaty of Waitangi (State Enterprises) Bill is very important, and it is about to be passed into law. It is important because most people in New Zealand are aware of a growing concern about racial conflict in this country, and the Bill will influence the feelings that are running high at present. I am somewhat disappointed that the Government seems unwilling to put up

more speakers on such an important issue, and to try to justify to the House and to the public at large the reason for a breach of a fundamental principle with which the Bill does not deal adequately.

The real issues before the country, which are not addressed by the Bill in any way, include the relevance of the Treaty of Waitangi today, nearly 150 years after it was signed, when the circumstances were quite different from what they are today---economically, demographically, and in many other ways; yet the Government has made no attempt to bring to the knowledge of people matters that can help them decide which, if any, of the treaty provisions should still be relevant. Then there are the principles of the treaty itself, and the way we are to extract those principles from the quite simple document so that we can guide the nation in the years to come. Again, no attempt has been made on that issue. Next there is the question of the return to Maori ownership, referred to in the Bill. What does that provision mean? Who in fact gets the land? Who are the Maori people to whom the land should be returned? How is it to be returned? Who, in fact, is Maori? Are we reaching the stage at which we say that a person is Maori who feels that he or she is Maori; if so, in what way will that person qualify to share in that land ownership? If I claim sufficiently strongly that I feel Maori, do I then become a member of Ngati Whatua? Do I qualify to share somehow in the Bastion Point land? If not, why not? How do we determine that matter? Those are the issues of the day, and we have not addressed them. Instead, the Government, in its desire to realise assets, sought to transfer land from the Crown, which would have defeated Maori claimants, and found itself in the Court of Appeal on the receiving end of a judgment that clearly it did not like.

The real issues to be determined by the House and by the public are these: was it the Government's intention to transfer the land from the Crown to the State-owned enterprises; if so, was that intention frustrated by the Court of Appeal decision that held that such a transfer would be in breach of the principles of the treaty? The answer to that first question clearly is yes, the Government did intend to transfer the land and it did intend to do so in terms that were in breach of the treaty. So the second question then becomes: in the resulting settlement reached between the Government and the Maori Council, did the Government concede, first, that the Waitangi Tribunal should be the sole judge of anything that might be in breach of the principles of the treaty---and the answer is, yes it did---and then, secondly; if so, should the Waitangi Tribunal be the final and sole judge of whether any land should be returned to Maori owners? The answer to that question is yes, the Government did concede that.

So we move to the next question: would those powers have been granted to the tribunal had it not been for the Court of Appeal decision? The answer is no, they would not have been, because under the existing legislation the Waitangi Tribunal has merely recommendatory powers, and clearly that position was intended to continue. But the Court of Appeal has forced the Government to change its position. And so we reach the final and most important question of all; is it right, proper, and acceptable that the decision-making---to determine finally whether a piece of land or an action is in breach of the principles, and which piece of land, if any, should be returned to Maori ownership---is to be removed from Parliament and given by delegation to the tribunal. The answer to that question is no, it is not right, proper, and acceptable, because in the ultimate it is for Parliament, representing all New Zealanders, to decide whether a grievance is fair, whether the grounds have been made out, and, if so, what should be done to resolve the issue. It is for Parliament to do that, not the Waitangi Tribunal, sitting on its own, acting under its own procedures, doing

what it considers best, and then finally concluding that this is in breach, or that is not in breach; that this piece of land should be returned to Maori ownership, and holding the Government to its binding and final conclusion.

So, when the Government asks the National Party why it objects to the Bill, the answer is that it is because the power of Parliament---the status of Parliament---is being impugned. It is not for the tribunal or any other subsidiary body to resolve issues between the Maori people and the Crown: that is for Parliament to do. Quite apart are all the other procedural problems about appeal rights, for instance, the locus standi of parties in an action before the tribunal. Those are lesser issues, nevertheless important, but of less importance. The real issue is: should Parliament delegate to a tribunal the right to resolve those issues? The simple fact is that New Zealanders do not want that to happen. They do not accept that that is the proper course to follow. We are being asked to pass the third reading and allow the Bill to become law and that will create more tension and more problems than New Zealand has at present. So we must ask ourselves whether that action is wise. Clearly, the answer is that it is not wise. Then we must ask whether there is any other course. The answer is yes, there must be a better course. Why can the tribunal not continue to have recommendatory powers only, so that in the final analysis the House decides?

A convincing argument has not been put forward. All we know is that the Maori Council, using its considerable tactical skills, has treated with the Government as a result of the Court of Appeal decision, and has persuaded the Government that this course should be followed. Full marks to the Maori Council. But, when it comes to the House passing the Bill to put into place the settlement reached, it is for the House to decide whether it is proper to do so. Opposition members do not consider that it is proper. The issue of Maori claims is a delicate one and needs to be handled with great care, rationality, and concern. To pass a Bill that has the opposite effect raises tension and is unhelpful. People feel much disquiet about the direction in which the Government is going. For those reasons---and they are valid reasons---the Opposition does not support the Bill. It has waited endlessly for the Government to justify the settlement that was reached and the reasons for the Bill. However, that explanation has not been forthcoming, and it is hardly any wonder that the public at large and the Opposition are not prepared to support the Bill.

In conclusion, we must all work together, but Parliament is the place where that can be done---not in an isolated tribunal of only a few people who, without question, are doing their best, having been given the impossible task of trying to bring together the two races that at present seem to be diverging. That is the problem. Therefore the Opposition opposes the Bill. We would have hoped that the Government would bring forward to the House something more constructive than it has done.

The House divided on the question, That this Bill be now read a third time.

Ayes 42

Anderton; Austin; Braybrooke; Butcher; Clark; Davies; de Cleene; Dillon; Douglas; Duynhoven; Elder; Fraser; Goff; Hunt; Keall; Kelly; King; Kirk; Matthewson; Maxwell, R.K.; Moore; Moyle; Neilson; Northey; Prebble; Robertson; Robinson; Rodger; Scott; Shields; Shirley; Simpson; Sutherland; Sutton, J.R.; Tapsell; Tennet; Terris; Tizard; Wallbank; Woollaston.

Tellers: Mallard; Tirikatene-Sullivan.

Noes 28

Angus; Birch; Carter; Cooper; East; Gair; Gerard; Graham; Grant;

Kidd; Kyd; Lee; Luxton; McClay; McCully; McKinnon; McLean;  
Maxwell, R.F.H.; Muldoon; Munro; O'Regan; Smith; Upton; Wellington;  
Williamson; Young, V.S.

Tellers: Gray; McTigue.

Majority for: 14

Bill read a third time.

**13 Jul 1988, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 490, pp5080**

**Private Land Protection Bill** (Introduction)

PRIVATE LAND PROTECTION BILL  
Introduction

Mr McLEAN (Tarawera): I move, That leave be given to introduce the Private Land Protection Bill. The Bill is timely, because it deals with one of the major issues facing New Zealand society today---race relations. It is designed to give security, to calm fears, and to reduce tension. The purpose of the Bill is to remove some of the fears, doubts, and tensions and to build a basis with confidence to enhance race relations. That is its purpose. I hope to continue my speech in 2 weeks' time.

Debate interrupted.

**10 Aug 1988, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 490, pp5835-5837, 5845-5846**

**Private Land Protection Bill** (Introduction)

PRIVATE LAND PROTECTION BILL  
Introduction

Debate resumed from 13 July.

Mr McLEAN (Tarawera): The Bill is very simple. It gives absolute protection to private land against claims made through, and decisions made by, the Waitangi Tribunal. It protects, equally well, Maori land and pakeha land, leasehold land and freehold land. I pay tribute to my colleague the member for Waitotara, who first had the concept for the Bill, and who will be speaking in the debate. I expect the Bill to be supported by the Government. Major issues between Maori and pakeha today are those of race relations and land. Much of the pakeha flight to Australia arises because of fear about issues such as land. Many Maori go to Australia for different reasons. Surprisingly, apart from the segregation between Queensland and New South Wales, Maori and the pakeha seem to live more happily together under the Hawke Government in Australia than they do under the Labour Government in New Zealand.

As well as that flight to Australia there are much more malignant missions, such as the mission to Libya by Maori activists. Among pakeha people one of the major fears relates to the loss of land. The Bill seeks to provide an absolute assurance that people will not lose their land as a result of Waitangi Tribunal decisions. At the same time, Maori people seek a similar assurance under the treaty that their land rights are protected. At present the law is not absolutely clear. The Waitangi Tribunal effectively operates under three Acts. Two of those Acts are badly constructed and one is Draconian. The Draconian Act is the Public Works Act, the vehicle that is used for compensation.

It is not just the compensation clauses that have been brought in.

Several parts of the Public Works Act have been incorporated through the Treaty of Waitangi (State Enterprises) Act. The two badly constructed Acts are the State-Owned Enterprises Act and the Treaty of Waitangi (State Enterprises) Act. I was on the select committee for both of those measures. The legislation was rushed through select committees late at night, forced through by the Government majority, with meetings right up until midnight in an effort to ram those poor, badly constructed measures through Parliament. As the legislation was prepared under great pressure, there will be loopholes in the system.

I found one loophole when the select committee was considering the Treaty of Waitangi (State Enterprises) Bill. That loophole would have enabled either the lessee's interest or the lessor's interest in leasehold land to be lost. It was not intentional, and Opposition members on the select committee managed to persuade the Government members to close that loophole. If that one loophole existed, there may well be others. Incidentally, that particular loophole would have had a significant effect on Maori leases as well as on general land. I cannot give an absolute assurance, nor can the Prime Minister or the Minister of Justice give an absolute assurance, that private land will not be affected by the Waitangi Tribunal.

Hon. Richard Prebble: Rubbish!

Mr McLEAN: No one believes the Minister for State-owned Enterprises---it is of no use for him to give an assurance, because not even the member for Sydenham trusts him; not even the Labour Party trusts him. Nobody can give an absolute assurance that private land is safe from claims under the Waitangi Tribunal. The Bill is intended to add a ``belt and braces'' provision to ensure that the law is absolutely certain, and that it follows a practice often adopted in the law when the law is complicated or obscure. The ideal solution is to rewrite the law, but in many cases a ``belt and braces'' provision is added just to make sure, as Parliament has done frequently. The Bill is fully in accordance with the practices of the House. Specifically, the Bill prevents district land registrars from registering changes in ownership of land as a result of Waitangi Tribunal decisions in any cases other than those that relate to land that has come from State-owned enterprises. It is a very simple provision; it also provides for the protection of the leasehold of Maori land that could well be similarly affected.

It is not a complicated Bill; it is a simple one. It provides absolute assurance that private land will not be touched by decisions of the Waitangi Tribunal. The Government would need to amend the Bill if it wanted to interfere with private land. Therefore the Bill gives notice to the Government that Parliament will stand in the way of the Government should it decide to make amendments to the law that will have a significant effect on private land, or on private interests in land such as pastoral leases. Already there have been mutterings from the Prime Minister and others that a change in landlord would not make any difference. The pastoral lessees know better, and the pastoral lessees will be able to rest comfortably, knowing that the Government would have to amend the Bill, when enacted, in order to transfer pastoral leasehold land.

The third change the Bill makes is to provide a warning to the people of New Zealand. If the Government does trifle with private land, the Act would warn people about that action, and the legislation would have to be amended. One of the major fears held by pakehas in the race relations issue is that their own private land may be touched, because the feeling for private land is shared by both pakeha and Maori alike. The Bill is non-racial. It applies equally to Maori land and to general land. It provides protection to both. I wonder why Government members are so upset that a non-racial Bill of this kind could be introduced. Providing re-assurance on the

land issue will enable some of the other tensions in race relations to be dealt with in a more satisfactory way.

The removal of that fear will enable a final and fair settlement of Maori land claims to be made, and it is hoped that, in accordance with National Party policy, a final and fair settlement will be made this century, not next century. Reassurance on the land issue will enable other issues to be dealt with---the issues facing young Maoris, the issues of education and employment, and the issue of the mana and place of young Maori people in society. Dealing with the land issue and removing that fear will enable progress to be made on the two other great issues that are troubling race relations. In a democracy such as ours a Government cannot continue without the approval of the majority, and, equally important, a Government cannot continue without the consent of the minority. In the matter of race relations the points of tension have to be taken out one by one. One of the major points of tension is the land issue. The Bill will provide an absolute assurance that will help to take the tension out of that issue.

Hon. RICHARD PREBBLE (Minister for State-owned Enterprises): The Government will be recommending to the House that it throw out the Bill. The Private Land Protection Bill is irresponsible, reckless, racist rubbish. Every member of Parliament knows that the race issue can be exploited by the irresponsible, but most members of Parliament know that it is not a wise thing to do. Everybody knows that the atomic bomb works, but countries do not use the bomb because they know that whoever lets it off will die. I say to the member for Tarawera that the race relations matter is also a bomb. A politician who puts a match to it cannot say to the electorate that he or she has the ability to defuse the bomb. Every member of Parliament knows that it is possible to turn New Zealand into a Northern Ireland, a Lebanon, or a South Africa. Little intelligence would be required to do so. Indeed, what would be needed is a lack of intelligence. All that one needs to do is be prepared to go out and fan people's fears. There are people with fears, and there are people who are paranoid about race, but that is not a reason for politicians to exploit the issue. The Bill would sit neatly on a legislative programme in Cape Town or in the Stormont, but it has no place in the Parliament of New Zealand.

The member for Tarawera knows that the Bill is based on misinformation, and is totally unnecessary. The Waitangi Tribunal does not have the power to make decisions about private land. Indeed, it does not have the power to make decisions; it can make only recommendations. The member for Tarawera said that the law on that matter is not clear, yet he served on the select committee. I shall read a legal opinion on that law. The Deputy Chief Judge of the Maori Land Court, Judge McHugh, stated: ``There is a widespread but erroneous view in the minds of the public that private owners of farm and other lands are at risk of losing their land as a result of Maori claims under the Treaty of Waitangi Act. Disputes which come before the tribunal are between the Maori people and the Crown. There is no provision in the Treaty of Waitangi Act, or elsewhere in the general law, which would enable the Crown to require owners of privately held land to pass that land over to Maori claimants whose ancestors might once have owned it.'' That legal opinion is an authoritative statement on the law.

The member for Tarawera knows that people's fears of losing their land are baseless. We know that that is so because the member was quoted in the New Zealand Herald on 17 February this year, under the headline ``Land loss fears baseless''. The member for Tarawera said: ``Fears held by many New Zealanders for the loss of their farms or

homes through Maori land claims have no basis.' He said that to a National Party meeting in Edgecumbe. He said: 'The outstanding Maori land claims must be settled, fairly.' That is what he said on 17 February, yet he has come into the House and introduced a Bill that says the exact opposite. Why introduce this Bill? What good will it do New Zealand to fan the fears of racial paranoia? What kind of political advantage does the member hope to gain? What kind of New Zealand is the Opposition hoping to create?

Is the member basing the Bill on the Treaty of Waitangi (State Enterprises) Act, which the House passed a few months ago? That Act was passed to settle a Court of Appeal case brought by the New Zealand Maori Council. The Crown bound itself in relation to Crown land---and only Crown land---to follow the decisions of the tribunal. The member for Tarawera knows that no private individual is in any way adversely affected by that Act. The member knows, for example, that pastoral leases, to which he referred in his speech, are specifically excluded. He knows that that is so, because he was on the select committee. If people who owned a pastoral lease were listening to Parliament they would think 'By George, my pastoral leases are somehow endangered.' The member for Tarawera does not believe for 1 minute that that is so---

Hon. V. S. Young: They're subject to recommendation from the tribunal.

Hon. RICHARD PREBBLE: ---nor does the member who is interjecting. We must ask why an Opposition member made such an irresponsible speech. Any private individual who decides to buy Crown land that is so bound does so with full notice and full compensation. If the member for Tarawera is referring to the court settlement, on what right does he base the Bill? Is the Opposition telling Parliament and the country that it does not accept the legal validity of the decision made by the Court of Appeal on the Treaty of Waitangi? If the Opposition accepts the decision made last year on the treaty it must accept the court settlement. It is not possible for the Opposition to set aside a court settlement without its saying that a National Government would not follow the rule of law. All Governments have to make that very basic decision. We have to decide whether we are a Government of the rule of law---whether we follow decisions made by judges, and are bound by the law as every citizen is---or whether we consider that the Government is above the law. The governments of most countries consider that they are above the law. The governments of only about 30 countries consider that they are bound by the rule of law. If the Opposition considers that the electorate of New Zealand wants to elect a Government that is not bound by the rule of law it will suffer an even bigger defeat than it did at the previous election. If that is the policy of the Opposition it should come out and say that it is a party that no longer considers itself bound by the rule of law.

The member for Tarawera mentioned the Opposition's policy on race relations. I ask the next speaker to tell us its policy on race relations and the treaty. It is not often that I find myself in agreement with the Dominion. However, this week's editorial should be read by every thinking New Zealander. On Wednesday, 10 August, under the headline 'National's crossroads', the editorial writer made many valid comments that are applicable to this Bill. The editorial comments that the Opposition does not have a policy, and that it agreed at its conference not to have any.

Hon. Mike Moore: That's not new.

Hon. RICHARD PREBBLE: The Minister says that there is nothing new about the Opposition's not having a policy, but the editorial states: 'But there is one issue which National is unable to fudge: race relations....In its long period in office, National did little to



address Maori grievances.' The editorial then refers to the Rotorua conference, and states: 'The formal resolution reached was meaningless,...The basic split, between the Winston Peters faction'---perhaps I should call it the member for Tarawera faction---and the more thoughtful individuals, remains. Mr Peters talks about an out-dated Treaty of Waitangi which needs to be renegotiated. This shows just how far out of touch with Maori opinion the party's Maori affairs spokesman really is. The overwhelming majority of Maoris regard the treaty as sacrosanct.' The editorial goes on to state: 'It is in everybody's interests that people like Sir Graham Latimer and Hiwi Tauroa prevail over Winston Peters in the party debate. Unfortunately, that cannot be taken for granted.' That is what the Dominion editorial stated this week about the Opposition's policies. Government members are entitled to ask whether the Opposition will follow the advice of the member for Tauranga---the Bill seems to be in line with that course of action---or the advice of Sir Graham Latimer, and some of the sane people in the National Party.

The Government's views on the issue are clear. It says that New Zealand was founded when the Crown entered into the Treaty of Waitangi---a treaty that is unique in the history of the world, and that makes New Zealand a unique nation. It is a treaty between two peoples who agree to share a nation. Implicit in the treaty is an acknowledgment of the equality of two peoples, and, while the clauses in the treaty are important, they are not as important as the spirit of it, which acknowledges that a multiracial and multicultural society is not just possible, but desirable. The basis of that acknowledgment is a recognition of the basic equality of man---or should we say, these days, 'persons'. That is the basic principle on which this nation, my party, and the Government are founded. I say to the member for Tarawera that New Zealanders fought two world wars to oppose the kind of rubbish that he is putting forward in the House today---the kind of rubbish that rips up the rule of law, the kind of rubbish that incites racial tension, and the kind of rubbish that seeks to divide New Zealanders. It is said that power corrupts, but I say to the member for Tarawera that the desire for power corrupts even further.

I point out to the House yet again the inconsistencies of that member. On 17 February his comments were reported in the newspaper under a headline, 'Land loss fears baseless', yet he comes into the House and tries to introduce a Bill on the matter. He says that no one can give an assurance on the matter, but he gets an assurance from a judge---not any judge, but a judge of the Maori Land Court---that no private land is in any way threatened. The member for Tarawera knows that that is so. So does every member of Parliament. We all know that the Bill is really an attempt by the Opposition to get into office by dividing New Zealanders. I say to the member that what he has done today is reprehensible, irresponsible, and rubbish. Both he and his Bill should be thrown out.

Hon. V. S. YOUNG (Waitotara): It is the Minister who has just resumed his seat who is the irresponsible one. He is the reprehensible one. He stands up and extols the rule of law, yet he has been more critical of the judicial process than has any other Government member. The Bill is about the rule of law. It is about the protection of private freehold land. The Minister for State-owned Enterprises knows full well that Judge McHugh has said publicly that private land is not excluded from the recommendations of the Waitangi Tribunal. All New Zealanders heard him say that on television.

One of the strongest advocates of a case before the Waitangi Tribunal, Stephen O'Regan, appeared on the 'Frontline' programme on

television, and said that if necessary the Ngai Tahu claim would extend to include private land. What is the Bill about? It is about keeping private land out of the jurisdiction of the tribunal. It is about protecting the title to our own land. It refers to the land of not only non-Maori New Zealanders but also the many Maori New Zealanders who want to have the title to their own section or their own piece of farm land protected. That is what the Bill does. In the ``Frontline'' programme the presenter asked Mr O'Regan: ``Are you ever going to seek private property?' ' Mr O'Regan said: ``We have not.' ' The presenter asked: ``Will you ever?' ' Mr O'Regan answered: ``If my people at some point find that negotiations with the Crown and over the Crown resource cannot be settled, we will have to then go back to the underlying issues that history is underlying those---private interests.' ' The presenter asked: ``Does that mean yes, you may seek private property?' ' Mr O'Regan said: ``If we are forced to.' ' It is absolute nonsense for the Minister for State-owned Enterprises or any other Government member to say that the matters put before the Waitangi Tribunal, and on which the Waitangi Tribunal can make a recommendation, concern only the land of the Crown.

In any case, there are plenty of private interests in land that is in the title of the Crown. On 22 March I asked the Minister of Justice, in a written question: ``Will he give the assurance that the terms of any registered lease of Crown land will not be altered without the concurrence of a lessee as a result of any recommendation of the Waitangi Tribunal?' ' The Minister replied: ``Deferred payment licences and leases, under which the lessee has the right to acquire the freehold, are excluded from presumption of land on recommendation of the Waitangi Tribunal under clause 27(b) of the Treaty of Waitangi (State Enterprises) Bill.' ' There is no question about that matter. It is clear in the Bill. However, the Minister's answer went on: ``Other leases of Crown land which confer rights of pasturage but no right of the soil are nevertheless contracts between the Crown and the lessee and the terms of the individual contract made under the Land Act 1948 would apply.' '

In that answer the Minister is saying that the lessor of pastoral leases, which today is the Crown, may be subject to a determination or a recommendation of the Waitangi Tribunal that would make the claimant the lessor. Lessors of those leases at present are the most unsettled about the powers of the Waitangi Tribunal. The matter has to be made clear; it has to be made clear that private interests in properties will not be subjugated to a recommendation from the tribunal, and, indeed, that the opportunity to have pastoral lease land reclassified into farm land will not be taken away. When the pastoral leases are reclassified, the land can then be leased on the basis that the lessee can purchase the freehold. The Ministers know that that is so. There is no way that, while the Waitangi Tribunal is wrapped up in the Ngai Tahu claim and the succession of other claims for pastoral lease country and other country in the South Island, any such determination will be made. I find it extraordinary that the Minister for State-owned Enterprises accused the National Party of being racist, and of trying to stir up trouble.

Hon. David Butcher: That's right.

Hon. V. S. YOUNG: I hear a comment from the Government benches that that is right. What absolute nonsense! The Opposition wants to remove the trouble that has been stirred up by the Government. It is not as though the South Island claims have been neglected over the years. In 1944, in this very Chamber, Parliament agreed that \$20,000 a year would be paid for 30 years in full and final settlement of the Ngai Tahu claim. It was accepted by those people who represented the Ngai Tahu, and it was welcomed by the Maori spokesman for the Ngai Tahu people in the Legislative Council---the father of the present

member for Southern Maori. He was congratulated on the arrangement, which made it a statutory requirement that 300,000 be paid over a period of 30 years. In 1974, at the end of that period, Parliament decided that the payments should be made in perpetuity. The matter concerns the dispute over the Kemp purchase of what was called the Middle Island---the South Island. It was dealt with by land commissions, by a royal commission in the 1920s, and was finally determined in 1944, when a well-established Labour Government was in office. The legislation stated: ``An Act to effect a final settlement of the Ngai Tahu title and the Ngai Tahu claim''.

Mr Doug Kidd: Final?

Hon. V. S. YOUNG: Yes. ``Whereas the members of the Ngai Tahu tribe and their descendants have from time to time made certain claims in respect of the purchase of the Ngai Tahu block by Mr Kemp on behalf of the Crown in the year 1848, and whereas the persons now interested in the claims have agreed to accept the payment of a sum of 300,000 in the manner herein appearing in the settlement of the aforesaid claims...'' How many times does a claim have to be redetermined? My colleague the member for Tarawera is absolutely right in coming to the House to seek a double safety provision for the owners of private land. The claims have already been satisfied, yet are now again subject to inquiry. As has been said by Mr Stephen---or should I call him Tipene---O'Regan, who represents the Ngai Tahu people, they will not limit their claims to Crown-owned land, but will extend them to include privately owned land. Judge McHugh said on television that the Waitangi Tribunal can extend a recommendation to private land. Private landowners need to be given every safeguard.

Hon. PHILIP WOOLLASTON (Minister assisting the Deputy Prime Minister): The Bill must be one of the shabbiest and shoddiest bits of window-dressing that the House has seen in a long time. It is a sad day for New Zealand and a sad day for Parliament when a private member's Bill of this nature is brought into the House. The Bill seeks to create racial strife, to divide New Zealanders along racial lines, and to make petty political capital out of it.

During his 14-minute speech the member for Tarawera said one true thing on which the House can agree. He said that race relations were a major issue today, and that pakeha fears about race relations are connected to ownership of land. In saying that, the member unwittingly revealed exactly what he is on about tonight. He is setting out to create a fear of something that does not and cannot exist. He is setting out to plant the suggestion in the minds of New Zealanders that there is a threat, although that threat does not exist. He wants to make political capital out of the fear he creates. There is a name for that---disinformation---and it is a well-known technique that has been used by several regimes that sought to destabilise political positions. It has been used by totalitarian regimes in the USSR and Nazi Germany, and it has been perfected to a T by both countries. It has also been used by political guerrillas in certain circumstances. It has no respectability, and I am ashamed that a member of Parliament has brought it into the House and used it in this way. The member for Tarawera has adopted the role of agent provocateur. He has adopted the role of one who tries to stir up people to take certain action on the basis of fear and by pretending to be on their side.

It is interesting to go back a little way and to recall the position the same member took on a different but related Act---the Treaty of Waitangi (State Enterprises) Act. At that time he set out to create the fear in the minds of Maori landowners that their land

was under threat. He tried to sidle up to Maori landowning interests and suggest that that legislation in some way would deprive them of their landowning rights. The member found that the technique worked. It gave him a buzz, and he used it all over the place. He does not mind being totally inconsistent, and saying one thing to one set of people and another thing to another set of people. I find that approach totally despicable.

What happens next? Having created a fear, he then pretends that he can provide the solution. The member for Tarawera creates his fear from a shadow on the wall, blows out the candle, and then says that he has fixed it. Having stirred up racial fear and antagonism, the member then parades himself as the one who will try, by legislative fiat, to calm the position and to take the heat out of it. The member used the analogy of fire and flames. He found a little smouldering spark, blew on it, and made it a little bigger. Now he is pretending to pump water on to the spark, but he is actually pouring petrol on it. He has the cheek to ask for a firebrigadesman's medal, to boot. This Bill is something that the House should have no part of.

The Bill is written carefully and cunningly, but it does no more than negate a part of the Treaty of Waitangi (State Enterprises) Act, although it is not written in that form. The Bill is written to plant in the minds of people who read it the fear that there is a threat to private land. It is written to plant the fear that the Waitangi Tribunal can confiscate land. I quote from the considered opinion of Judge McHugh, of which the member is aware, but which he has chosen to ignore: ``There is no provision in the Treaty of Waitangi Act, or elsewhere in the general law, which would enable the Crown to require owners of privately held land to pass that land over to Maori claimants whose ancestors might once have owned it.'' That statement is very clear. Judge McHugh went on to make a plea---which clearly fell on deaf ears in relation to the Opposition---to all New Zealanders, whatever their ethnic background: ``There is a need for the nation to understand the facts and the issues. There is an obligation on all our leaders, particularly the politicians, to examine these issues calmly and work slowly and tolerantly towards an accord.'' He was asking for honesty and information. However, he is getting dishonesty and disinformation from the Opposition. Clearly, the House needs to---

Hon. V. S. Young: I raise a point of order, Mr Speaker. It is totally out of order for the member to suggest that all a person is getting is dishonesty from a political party---in this case, the National Party. [Interruption.]

Hon. PHILIP WOOLLASTON: I withdraw.

Mr McLean: I raise a point of order, Mr Speaker. The fired Minister of Health, who is now the Minister of Internal Affairs, made a remark that is outside the Standing Orders.

Hon. Dr Michael Bassett: I said that it sounded as though telling the truth would be penalised.

Mr SPEAKER: The member is incorrect to interject on a point of order, regardless of the substance of his comment, which I suspect was not out of order. However, in the context of the comment being made during a point of order it is out of order, and I ask the member to withdraw it.

Hon. Dr Michael Bassett: I withdraw.

Hon. PHILIP WOOLLASTON: His Honour Judge McHugh, the Deputy Chief Judge of the Waitangi Tribunal, has made a plea for honesty and for carefully marshalled information in relation to this matter. I go no further than to say that clearly, in relation to the Opposition, that plea fell on deaf ears. It has not brought accurate information to bear on the matter, but it has brought disinformation to bear upon it. That that is so exhibited perfectly well in the reference to

leasehold land. The member for Tarawera referred to Crown pastoral leases being protected by the Bill. Clause 4 pretends to protect leasehold land from decisions made by the Waitangi Tribunal. What is the actual position in relation to Crown pastoral leases? It is impossible for the Waitangi Tribunal to create any interest other than the existing lessors' and lessees' interest in Crown pastoral leases. There is no way under any Act of Parliament that the Waitangi Tribunal can attach private ownership of a lease in Crown pastoral land or any other leasehold land.

I know that the member for Tarawera went to South Canterbury to a meeting of the high country branch of Federated Farmers that was attended by many Crown lessees. He told them that their land could be confiscated or removed by a decision of the Waitangi Tribunal. That suggestion was widely reported. It is a mischievous suggestion. He planted that seed of fear, and now he is pouring petrol on the sparks by repeating that suggestion in the House tonight. He should acknowledge openly and honestly that there is no way that the State-Owned Enterprises Act, in conjunction with any other Act---particularly the Treaty of Waitangi (State Enterprises) Act---can attach any other interest to leasehold land. In fact, the only binding decision that the Waitangi Tribunal can bring down relates to land that passed after 10 December 1987 to a State-owned enterprise, and that was on-sold by the State-owned enterprise with a caveat to show that it might be subject to a claim to the Waitangi Tribunal. There is no way in law that any person can unwittingly buy land, obtain title to it, and have it attached, or another interest created in it, by a decision of the Waitangi Tribunal.

The Bill is a fiction and a figment, and it is intended to do nothing more than stir up fears along the lines of the fears that Opposition members have tried to stir up elsewhere. Such action is in line with what happened at the National Party conference, where they played both sides of the field and tried to run both ends against the middle. They stirred up fear and discontent. The Leader of the Opposition made patronising references to suntanned New Zealanders, and several other references that diminished completely the Maori people. The member for Tauranga attacked the Treaty of Waitangi, saying that a National Government would seek to repeal it. The Leader of the Opposition said that under a National Government no private property would be at risk from the decisions of the Waitangi Tribunal. That protection is already in the law---it exists under any Government in New Zealand. The Leader of the Opposition is putting up a straw man. On the other hand, he is turning round and pretending that somehow under a National Government it would be possible to relieve the workload of the Waitangi Tribunal and deal with all the claims before it in 10 years. That policy is shallow hypocrisy.

WARREN KYD (Clevedon): The previous speaker described the Bill as alarmist, and suggested that it is an attempt to stir up trouble. The Bill is intituled: ``An Act to ensure that the principle of indefeasibility of title to land is fully maintained and protected'', and provides that no decision of the Waitangi Tribunal shall create any estate or interest in land. However, Government members say that there is nothing to worry about because the Waitangi Tribunal cannot do that. If the Government thinks like that why is it so stirred up about the Bill? If that is the position anyway, the Bill has no effect.

Clause 3(2) states: ``District Land Registrars shall not make any entries in their respective registers relating to---(a) The transfer or termination of any estate or interest''. There is nothing alarmist or racist about that provision. The Bill states that no caveat, charge, or other document shall be registered as a result of a

decision of the tribunal. What can be racist or alarmist about that? According to the Government that is the present position in the law. The Bill provides protection for leaseholds of Maori land. There is nothing alarmist about that. The Government is getting steamed up about nothing, if, as it says, the Treaty of Waitangi (State Enterprises) Act has no effect on private land.

However, Opposition members say that there is that risk, and private people are entitled to the reassurance. What can be wrong about that? The Minister for State-owned Enterprises said that Opposition members were racist. How dare he say that! The National Party is the only party that puts up Maori candidates in non-Maori seats. The Labour Party does not do that. The National Government settled the Bastion Point claim. The National Government set up Te Maori. The National Government has a good record in race relations, and is not racist. This Government has created more racial tension in its short time in office than any other Government has created in history. It is pitting Maori against Maori, Maori against pakeha, and pakeha against pakeha. The extremists on both sides are being stirred up. They are creating a New Zealand that we do not want. There have been trips to Libya and cries about killing whites. This country is being inflamed by the Government's approach to race relations. The Government has opened up a Pandora's box, and the country is suffering. The Maori claims cannot be ignored, but must be dealt with in good faith and by negotiation. However, the Government is going the wrong way about it. In the long term, unemployment and education are more important. The Opposition is concerned about the migration of Maori people in great numbers. Maori people are concerned about the state of race relations, just as Europeans are concerned.

The Minister for State-owned Enterprises said that no private land is affected. If that is so, let the Government pass the Bill. If no private land is affected all that this Bill will do is reassure private landowners---and there is nothing wrong with that. If land is returned there will be no great worries. If there is no right to require private land to be returned there will still be recommendations made by the tribunal. At the moment the tribunal is considering claims for virtually the whole of New Zealand, and it will be called upon to make recommendations.

How would a farmer in Waikato feel if the tribunal made a recommendation that his land be returned? He would be scared stiff. Anyone would be. This Bill will reassure people such as that farmer, because they will know that the Government is setting out in writing that it will not return land. The Bill will guarantee those people their title to private land. Up and down the country claims have been brought by tribes such as the Ngai Tahu, Te Atiawa, Ngati Awa, and Te Arawa for specific areas of land occupied by Europeans. Those tribes have admitted to the select committee that they want some of the land returned to them.

The fears of European people are not groundless. They know that there is machinery for such recommendations. They know that the Government has a will, and they know that State-owned assets have been returned. They are making a logical progression in their minds when they say that their land might yet be affected. Claims have already been made against Government Property Services, the Tauranga Town Hall, and seven hydro-electric dams. Only today I was telephoned by members of a tribe in Tauranga, who told me that they are claiming three private hydro-electric dams in the Tauranga area. How do the people of Tauranga feel about that? I know that other private dams are being claimed in the Whakatane area.

Maori people are confused. Under the Treaty of Waitangi (State Enterprises) Act, they are making claims for private land to the tribunal. That action indicates that there is a great deal of

confusion on the part of Maoridom as well as of Europeans. People feel uncomfortable about some aspects of the Waitangi Tribunal power to decide those claims, and that makes it even more important that the reassurance about the protection of private land should be available. Those people realise that the Minister of Maori Affairs appoints the tribunal. Under the State Sector Act, Cabinet has the power to appoint senior public servants. Appointments to the tribunal are the subject of Government policy, and people are worried that at some stage a Government might have a policy of returning private land.

People are concerned about the method of appointment to the tribunal. They are also concerned at the terms of reference of the Waitangi Tribunal, which has to decide if an Act is inconsistent with the Treaty of Waitangi, when it can then return the land. They consider that the terms of reference are too narrow and do not take account of 150 years of history that cannot be redressed.

People would prefer more balanced terms of reference. They are worried about the absence of a right of appeal. Another two tribunals will soon be operating, and it may be that those tribunals will not hold the high status or have the high abilities of the present tribunal. If that happened a maverick decision could be made, against which there would be no redress. People would like a right of appeal that has an element of British justice. That would also provide a protection for Maori people, who could have a maverick decision made against them. People are concerned about the absence of a right of hearing before the tribunal, and about the tribunal's power to hear whatever evidence it chooses. They are concerned at the absence of a right of cross-examination. If a claim is made the claimant cannot be tested by cross-examination, which is one of the great rights in hearings in our courts.

There is concern at the history of that legislation. The tribunal was originally operating effectively. Mr Paul Temm, QC, was removed from that tribunal. People are worried about the possibility of removals and replacements on the tribunal, and about the tribunal being influenced to give effect to public policy. The Bill would be of benefit to New Zealanders. They would feel reassured if, under the legislation, private property could not be affected, and that would be good. People would like that to be encapsulated in legislation as a protection, a guarantee, and a back-stop. People would sleep more securely at night if a recommendation were made about their property.

Dr GREGORY (Northern Maori): The member for Clevedon was one of the few Opposition members I still had a degree of respect for, but as I listened to him tonight I wondered if he had finally been tainted by the same brush as his colleagues. That would be unfortunate, but Government members live in hope. The essence of the Bill is contained in its first two lines: ``An Act to ensure that the principle of indefeasibility of title to land is fully maintained and protected''.

It is a nullity in terms of the realities of legislation today, which already protects the very things the Bill is supposedly protecting for the first time. The Bill is a legislative reinvention of the wheel. It should be turned round the other way so that it can roll backwards to the place it came from. That is the dignity it should be given. The Bill is an attempt by Opposition members, particularly the member for Tarawera, to raise once again all of those bogies that members know do exist within society, and that Opposition members are all too keen to reactivate for ends that they believe will best serve their interests. The member for Tarawera is a classic example of Rip Van Winkle, who went to sleep, and when he awoke was 500 years behind the rest of the community. The member for

Tarawera has a long way to go to catch up, if he ever does, with the realities of today's society and the legislation that has gone through the House.

I want to touch on some of the matters that typify that member, and a good deal of the elements within the Opposition. The member for Tarawera mentioned that some Maori people have gone to Libya. His statement was to the effect that it was only Maori people who had gone to Libya. It would be interesting to look at the record and see how many other people from this country have also gone to Libya. That would give some redress to what can only be considered a racist comment---all too often heard from that member. The member also talked about the many pakeha who had gone to Australia. It was not until I reminded him of it that he realised that a good many Maori people are also going to Australia. One needs to redress constantly the accusations made by that member, particularly about race relations, which only on some occasions are made unconsciously. Many times they come to the fore as an expression of the mental processes going on just above the beard I referred to earlier in relation to Rip Van Winkle.

A good many things have been said tonight about the Bill and about the broader platform of our society. It is an issue that will continue to be debated in many forums in the land. That is important, because it is only by debate, by wise counsel, and by attempts through reasonable courses to address the issues of today that proper solutions for tomorrow will emerge. I caution Opposition members in particular that it is a matter of reason, of marshalling the facts correctly, that alone will bring about that solution.

I want to talk about the member for Waitotara. Rightly or wrongly, I cannot help but relate that particular member to a certain game of golf. I do not know whether he plays golf, but for a long time he has seemed to have a particular interest in retaining a certain golf course---for his own personal interest, I think---because he was most remiss---in fact, difficult---about some justification or rectification in relation to that land. However, the Government has redressed that matter, and I believe that that, too, will serve the best interests of this land.

The member for Waitotara also commented about certain Maori people. I want to pick up on a comment he made about Tipene O'Regan. I think he referred to him as Tipene---I think Tipene would be happy with that name. When one considers the comment carefully it gives the lie to what the member for Waitotara said. On the ``Frontline'' television programme Mr O'Regan was not calling for anything to be done under the Waitangi Tribunal---the matter related to private land, or certain lands that might be available to be dealt with under the ordinary laws of contract. That was the issue that was being addressed.

It is important to understand the attitude and the thinking of Mr O'Regan, and of those with whom he is working, in order to develop a just resolution in relation to many of their lands in the South Island. The opinion of the Kaitahu people---I suppose that is the correct term---is to prefer the much gentler road to the resolution of their land problems. They believe that that can best be achieved through the channels of the Waitangi Tribunal, rather than through the ordinary laws of contract. That basis is directing their thinking towards the use of the Waitangi Tribunal as a means of reaching some resolution. They, like many others in the House, know about the undercurrents, the frustrations, that are being felt not just by Maori people but also by a good many pakeha people, in relation to what they may perceive as their rightful ownership of land that may have been handed down by various means. I tell the member for Waitotara that that is the context in which Mr O'Regan made that



statement that has been brought into the debate tonight.

The issue of the Waitangi Tribunal is one that Opposition members have persistently raised in their arguments this evening---and perhaps in many other forums. It is an issue that they have probably not yet come to grips with. One could reflect on some of the discussions that took place at the recent National Party conference---namely, that it is an issue that Opposition members have yet to resolve. The suggestion that Opposition members should go round the country addressing this issue amongst the people might have merit in terms of its being an exercise in education with the aim of understanding the treaty. I have no argument with that view, but, none the less, it is a process that is already in train. At present there is a certain organisation---I do not remember the full name, but it uses the word Waitangi---that is going round the country trying to educate many people.

Mr McLean: Who---the Labour Party; or is it Jim Anderton?

Dr GREGORY: That would probably be an extremely difficult exercise in the case of the member for Tarawera. But, as I said, we continue to see the good in most people, and we hope that eventually the message will get through.

Mr McLEAN (Tarawera): I thank members of the National Opposition who supported the Bill. I thank them for their moderate manner, and for their constructive, considered, and moderate contributions. I also thank the member for Northern Maori for his speech, which, although at times somewhat abusive, was phrased in more courteous and quiet tones. Government members are very touchy on the issue. It is a major issue facing New Zealand, and one that the Government has allowed to get totally out of control. Government members are now very worried, and that reaction could be seen very clearly in the House tonight.

Indeed, for some months the Government has sought to prevent the introduction of the Bill and debate on it in the House. It has done that by fiddling round with the Order Paper and by stonewalling and filibustering. Government members are clearly touchy. One can see how touchy they are from the gibbering jabberwocky of the Minister for State-owned Enterprises. He was at his worst tonight. He ranted and raved, and he was full of personal abuse. However, that is par for the course. He was absolutely carried away and incoherent. Gibbering jabberwocky is the only term that one can use to describe his speech. His statement that the Waitangi Tribunal could only make recommendations was gravely misleading. Indeed, on land in which the State-owned enterprises acquired an interest from the Crown the Waitangi Tribunal makes binding recommendations that are of the same nature as a final decision.

Hon. David Butcher: That's what he said.

Mr McLEAN: The Minister did not say that; he said that the tribunal could only make recommendations. He did not say that the tribunal could make binding recommendations. In relation to the need for the Bill and the possibility of loopholes in existing legislation, I draw the attention of members to page 6 of the Treaty of Waitangi (State Enterprises) Act. Section 8A(6) was inserted by the select committee at my request, specifically to plug one loophole. I hope that that section works. Neither I nor the Minister of Justice, or any retired judge of the Maori Land Court can be totally assured that there are no loopholes left. However, there can be no assurance about what the Government may do.

The intention of the present law is that no private land be touched. The problem is that we cannot be sure that there are no further loopholes, and people cannot be sure of what the Government may do in future to amend the law so that private land may be

affected. The passage of the Bill would provide a warning to people if the Government decided at any stage to carry on with the policies it is undertaking at present and thus affect private interests in land. For example, one should consider pastoral leases. I was misquoted by both the Minister for State-owned Enterprises and the member for Hamilton West.

Hon. David Butcher: No, you weren't.

Mr McLEAN: I was misquoted, and the idiot from Hastings---the Minister of Energy---keeps jabbering away. My reference to pastoral leases was very simple. I said that pastoral lessees were concerned because they live in limbo. The lessors' interest---Crown interest---is held by the Department of Lands, which will soon go out of existence. As I pointed out in my introduction speech, the Government could, through a simple Bill, transfer the lessors' interest in the land to a State enterprise or to Maori claimants. The point is that passing the Bill will provide a warning to people should the Government decide in future to tamper with pastoral leases. The Prime Minister, who I presume still has some standing within the Government, has muttered that the change of landlord would not make any difference to the tenant.

Most extravagant language has been used about the Bill. The Bill is simple; it provides a belt and braces for existing legislation to give both the Maori and pakeha owners of private land, which is either leasehold or freehold, complete assurance that no decision made by the Waitangi Tribunal can affect their private interest in the land. The Bill applies to both Maori and pakeha alike. It has been described by Government members in most extravagant language. I suggest that their language is a measure of their touchiness and their unease about the Government's policy on race relations.

In conclusion, I must say that my colleagues and I are gravely concerned about race relations at present. Never before have I had constituents ringing me weekly and asking whether they should migrate to Australia to get away from such troubles under this Government. It is important that the race relations issue be faced up to squarely; that fears about land issues be resolved; and that assurance be provided. My Bill will do just that. At the same time, it is important for New Zealand to move on and for Maori land claims to be resolved in this century rather than the next. It is also important that the Maori land claims be resolved fairly and finally, and that future generations of pakeha and Maori are not bequeathed the grievances of the past century.

Secondly, it is of equal importance that the young Maori generation at present being destroyed by the policies of the Labour Government, and being denied proper education, proper jobs, status, mana, and dignity in the community, be offered a full place in society. Those two steps must be taken. When I introduced the Bill I said that in no democracy can the Government govern without the approval of the majority and the consent of the minority. The Government has lost the approval of the majority, and it is in danger of losing the consent of the minority. This is a simple, useful, and gentle Bill that will help race relations.

The House divided on the question, That leave be given to introduce the Private Land Protection Bill.

Ayes 29

Anderson; Angus; Birch; Bolger; Burdon; Cooper; East; Gair; Gerard; Graham; Grant; Kidd; Kyd; Lee; McClay; McCully; McKinnon; McLean; Maxwell, R.F.H.; Meurant; Munro; O'Regan; Smith; Storey; Upton; Wellington; Young, V.S.

Tellers: Gray; McTigue.

Noes 44

Anderton; Bassett; Butcher; Caygill; Clark; Cullen; Davies; Dillon; Duynhoven; Elder; Fraser; Goff; Gregory; Hunt; Jeffries; Keall; Kelly; Kirk; Marshall, C.R.; Matthewson; Moore; Neilson; Northey; Palmer; Prebble; Robertson; Robinson; Scott; Shields; Shirley; Simpson; Sutherland; Sutton, J.R.; Sutton, W.D.; Tapsell; Tennet; Terris; Tirikatene-Sullivan; Tizard; Wallbank; Woollaston; Young, T.J.  
Tellers: Austin; Mallard.

Pairs

For: Banks; Luxton; Marshall, D. W. A.; Muldoon; Shipley.  
Against: Braybrooke; Lange; Maxwell, R. K.; Moyle; Wetere.  
Majority against: 15  
Motion negatived.

**15 Sept 1988, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 492, pp6611-6622**

**Treaty of Waitangi Amendment Bill** (Report of Maori Affairs Committee on Bill)

TREATY OF WAITANGI AMENDMENT BILL

Report of Maori Affairs Committee

Dr GREGORY (Northern Maori): I am directed to report that the Maori Affairs Committee has carefully considered the Treaty of Waitangi Amendment Bill and recommends that the Bill be allowed to proceed as amended. I move, That the report do lie upon the table. The Bill makes some important amendments to the Treaty of Waitangi Act 1975. The Bill has arisen from the commitment the Government has given in response to the Court of Appeal case on the transfer of Crown land to State-owned enterprises, and the subsequent settlement with the New Zealand Maori Council. The commitment was that the Waitangi Tribunal be granted an increase in membership, and that other measures would be taken to help it to cope with its very heavy work-load, and an increase in work-load that will follow the passage of the Treaty of Waitangi (State Enterprises) Bill.

The amendment Bill has several functions. It increases the membership of the tribunal from a present membership of 7 to a maximum membership of 17, including the chairperson, who will also be the Chief Judge of the Maori Land Court. The Bill continues to provide for the appointment of members having regard to personal attributes, and the knowledge and experience of different matters likely to come before the tribunal. In addition, all appointments must be made having regard to the partnership between the two partners to the Treaty of Waitangi. That provision will preserve a reasonable racial balance amongst the members.

The Bill also provides for the appointment of a deputy chairperson to act in the absence of the chairperson. That deputy chairperson must also be a judge of the Maori Land Court. The Bill will enable the tribunal to sit in divisions. The tribunal does not have that ability at present. Those divisions may be composed of three to seven members. By virtue of that provision, claims will be able to be held concurrently, and that process will enable the work of the tribunal to proceed much more expeditiously.

The Bill provides for the appointment by the chairperson of presiding officers in each claim. Those presiding officers will chair each division for the purpose of hearing individual claims. The presiding officers will be the chairperson, deputy chairperson, any judge of the Maori Land Court---who need not otherwise be a tribunal member---or tribunal members who are barristers and solicitors of 7 years' standing. The Bill also provides that the tribunal may, for good reason, defer the hearing of a claim. One good reason may be the advisability of hearing several claims together when they relate, for

example, to the same matter.

The Bill provides power for the tribunal to state a claim to the Maori Land Court or the Maori Appellate Court to determine tribal boundaries, whether land or fishing, and to decide on competing claims made by groups of Maori. The tribunal's essential role is to adjudicate claims between Maori and the Crown. It does not necessarily have the experience or expertise to determine disputes between Maori that may arise during a hearing.

The Maori Land Court and the Maori Appellate Court do have that expertise and experience. The case-stated procedure will enable the tribunal to concentrate on its primary role while the technical and investigative matters are dealt with by the Maori Land Court. I commend the Bill to the House. It was referred to the Maori Affairs Committee on 5 May 1988. Since then the committee has met 4 times and heard 7 hours of evidence. In addition to the sittings in Wellington, the committee attended four all-day hui at different marae to hear evidence on this Bill and on other Bills. The committee visited the Otiria marae in Moerewa on 2 August, the Tamatekapua marae in Rotorua on 3 August, Te Poho-o-Rawiri marae in Gisborne on 29 August, and the Waipatu marae in Hastings on 30 August. Visiting marae to hear evidence is an increasingly important part of the role of the Maori Affairs Committee, particularly as the Bills coming before it have profound implications for the future of both Maoridom and society generally.

The committee received 27 submissions on the Bill from a variety of sources. Some were from interested individuals, three were from the fishing industry, four were from groups such as the Catholic Commission for Justice, Peace, and Development, and from Project Waitangi, seven were from Maori organisations, and one was from the Law Society.

Of the 27 submissions, 7 were opposed to the Bill's provisions and 20 favoured its introduction, although some of them had reservations. The main issues raised in the submissions concerned the size and composition of the tribunal, consistency in decision-making, tribal procedure, and the rights of the Maori Appellate Court. There was general support for clause 2, which increases the number of judges sitting on the tribunal. There was also support for the creation of divisions. That approval stems from the widespread concern about the delay in the work of the tribunal, leading to frustration among some Maori groups and uncertainty in the wider community.

Some submissions also recommended an increase in research and administration resources to aid the tribunal in its work. Concerns were expressed about the maintenance of consistency in tribunal decisions, particularly when it sits in divisions in different parts of the country. While recognising the need for consistency the committee felt that it should not be a problem, given the considerable expertise of members of the tribunal and the method by which members of the divisions are selected. Most submissions either supported or were silent on the removal under clause 2 of the requirement that a certain proportion of the tribunal membership must be of the Maori race. Some submissions advocated that a Maori majority should be maintained on the tribunal.

The submissions from the fishing industry also stressed the need for appointees to the tribunal to come from a wider background---for example, people from the business sector who have hands-on experience. All tribunal members should not necessarily have a historical or legal background. The New Zealand Fishing Association Inc. raised the matter of fairness in tribunal hearings. The association noted the absence of the right for persons appearing before the tribunal to question or cross-examine witnesses on crucial points. The suitability of marae as a venue was also questioned. The

committee sought advice from the department on that matter, and in response it was told that the Waitangi Tribunal operates as a commission of inquiry and that the inquisitorial approach is more appropriate in that function.

The committee also felt that there is a widespread misunderstanding of cultural differences, and that that misunderstanding gives voice to misconceptions about marae protocol. Some submissions, particularly those from Maori organisations, recommended that the tribunal should have greater autonomy and the same status as a High Court. However, most submissions, including those made on behalf of the fishing industry, agreed that the tribunal is held in high regard and that its integrity is beyond reproach. Any concerns for the future on that basis would be ill-founded.

In relation to the powers of the Maori Appellate Court or the Maori Land Court the Law Society recommended changes to clause 4 to state clearly the rights of ownership that are to be adjudicated on by the Maori Appellate Court relating to disputes between Maori. That is the only amendment that the committee recommends. However, the committee did not agree about it, and I note that Opposition members reserved their position on all clauses.

WARREN KYD (Clevedon): It was interesting to hear the member for Northern Maori discuss the marae visits. I agree that they are important, because the marae is the proper ground on which to test Maori opinion. However, in my view the visits were unsatisfactory in many ways. At the Otiria and Tamatekapua marae it was clear that many people had had no notice, or very short notice, and there was not the attendance that there might have been. It was also evident that many people did not know why they were there and did not have copies of the Bill. That was an unsatisfactory part of the marae visits, and in future the matter should be dealt with so that people know why they are there and have a chance to get their thinking into line. It was also noticeable that there was a wide variety of opinions. For instance, at Moerewa, Sir Graham Latimer did not agree with increasing the number of members of the tribunal. There was a difference of opinion amongst those on the marae, and it was difficult to test what opinion was coming through.

The Bill is important, because the Waitangi Tribunal has the most important and grave powers. One need only think back to the Muriwhenua claim, which made a recommendation that the fisheries in Northland should revert to the Maori, to see what follows from such a recommendation. It has directly led to the proposed sale of half of the individual transferable quotas to Maori interests. That is what followed the claim. Therefore every decision made by the tribunal, whether it be recommendatory or binding, is very important and highly influential on the Government. It is for those reasons that the powers in the Bill, and the powers not conferred by the Bill, are extremely important.

One need only consider some of the things that are still deficient in the Treaty of Waitangi Act. There is still no right of appeal. The Waitangi Tribunal deals with claims worth hundreds of millions of dollars, and in the future it will no doubt be dealing with claims worth billions of dollars. It is a common right of British law---and one that was promised to the Maori in the Treaty of Waitangi---that the Maori should have the rights of British subjects, yet there is no right of appeal on tribunal decisions. With the increase in the numbers on the tribunal it is possible that several tribunals will be sitting and dealing with different claims. The possibility of a divergence of views and differing judgments will be increased. In those circumstances there should be a right of appeal to get uniformity of decisions and to make sure that those persons who are

aggrieved have the chance to test the correctness of a decision. That is a grave defect in the legislation.

The Bill does not confer the right to cross-examine. Again, it was made clear in the submissions, especially by the fishing interests, that that was a defect. It was considered by fishing interests that some of the evidence given in relation to the Muriwhenua claim was defective and inaccurate, and they wanted to have the right to test the evidence by cross-examination. They did not have the right, and as a result they believe that the decision was erroneous. In British law it is said that justice must be seen to be done. If people do not get the right to cross-examine they do not see justice as having been done. Opposition members believe that that is a defect in the Bill.

A further complaint made in the submissions to the tribunal was the lack of the right to be heard. One could be affected by a claim over land of which one was a tenant, or land over which hydro-electric lines will pass, but would have no right to be heard by the tribunal dealing with the claim. As I have said, justice must be seen to be done. If a person whose rights are not affected does not have the right to be heard that person and others who read about the decision will believe that justice is not being done. That important aspect has been totally ignored.

Furthermore, the tribunal has about 150 cases waiting to be heard. Those 150 cases are very grave and relate to the ownership of hydro-electric dams and forests, and involve all of the State-owned enterprises, most of New Zealand, and most of the fisheries. Of the 150 claims, the tribunal has been able to deal with 2 claims a year. The present tribunal would probably get through the case-load in 75 years. Even with two tribunals it would still take about 40 years, and that is too long. New Zealanders are not willing to wait as long as that for troublesome disputes to be settled.

The tribunal has caused trouble in New Zealand, exacerbated problems between the races, and raised the profile of the claims. New Zealanders are worried about the matter, and are shifting overseas because of their worries. To shorten the case-load and have cases decided earlier is important, because the country cannot afford to have the decisions continuing into history and troubling New Zealand. There is nothing in the legislation to deal with that matter. The cases are taking too long, and there is nothing in the Bill to lead to the speedy resolution of the claims. There has to be a better way of deciding the disputes. The Bill does not enable disputes to be settled speedily and effectively, and that point will cause great concern to people. The Bill was an opportunity to do something, but that opportunity has been lost. For that reason the Opposition reserves its case.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): The Bill is a response to the increased work-load of the Waitangi Tribunal as a result of the extension of the tribunal's powers to cases dating back to 1840. The House must expect that the work-load may increase further with the passage of the Treaty of Waitangi (State Enterprises) Bill. Several changes have had to be made to the tribunal to enable it to deal with the cases brought before it. When I spoke on the introduction of the Bill, on 5 May, I made the observation that it was historically more significant than many people realise. The Bill is the most recent part of a process of dealing with outstanding Maori land grievances by various Labour Governments---the first Labour Government, the third, and now the fourth.

I shall talk about the passage of the Bill before the select committee, and specifically refer to clause 4, because that is the only amendment that the committee made to the Bill. Clause 4 relates to esoteric aspects of the law of take. In the Bill as introduced

clause 4 inserted a new section 6A to the principal Act. The new section provided that the Waitangi Tribunal may refer to the Maori Appellate Court for decision on questions of fact or of Maori custom and usage, or questions relating to the rights of ownership of any particular land or fisheries according to customary law principles of take and occupation or use. Finally, that new section provided that when a determination was sought to the extent practicable of Maori tribal boundaries, whether of land or fisheries, the matter was to be referred by the tribunal to the Maori Appellate Court. The proposed amendment relates to having to establish a matter concerning Maori custom or usage. Usage is an evolutionary matter. It also refers to the other rights of ownership by Maori---between one Maori and another, and between one Maori group and another---of any particular land or fishery according to the customary law principles of take or occupational use.

I acknowledge the request for the Bill to be more clearly expressed that was made by the New Zealand Law Society. Accordingly, the amendment brought in by the committee is more clearly expressed. I shall turn to a definition of the amendment as it relates to Maori customary law. Maori customary land is also known as papatipu---or, in some dialects, as papatupu. In relation to that papatipu land there are four rights. The term ``rights'' has been defined in the Bill as ``take'', even though that word also means ``petition'', ``matter'' or ``problem requiring a solution''. In clause 4, however, take relates to four different methods of acquiring Maori land---the right of discovery; the right by ancestry, or ``take tupuna''; the right by conquest, or ``take rau patu''; and the right by gift---``take tuku''.

Hon. J. B. BOLGER (Leader of the Opposition): The Bill is significant in the context of New Zealand society and the ongoing debate on the relevance of the treaty and the way in which it should be applied to a modern New Zealand. Therefore the decision to amend the membership of the tribunal is one that the House should reflect on seriously. I welcome the fact that the reference to the racial composition of the tribunal has been removed. When I first suggested that it was wrong to have such a requirement I was abused, even by the Government. I am pleased to say that the Government has accepted the wisdom of my advice that there should be no such requirement that there be a racial balance of a specified form on the tribunal. I welcome the increase in the size of the tribunal, because that will prevent what is now a totally unacceptable approach. The tribunal will be enlarged, and it will be able to sit in different parts of the country and deal with claims individually.

It is unacceptable to pursue the present policy, which is to apply the findings on the Muriwhenua claim generally to fisheries around New Zealand. That policy implies that the detail of the claim by the Muriwhenua people for their fishery is identical to all claims around the country. That is absolute nonsense. I can express it more forcefully by saying that at the time the treaty was signed in 1840 there were 2000 to 3000 Maori in the South Island. It is nonsense to suggest that they were actively fishing and farming the total fish resource around the South Island.

Hon. K. T. Wetere: The treaty covered New Zealand---remember that.

Hon. J. B. BOLGER: I remember precisely the conclusions reached by the tribunal on the Muriwhenua claim. The tribunal made specific and direct reference to the circumstances of that tribe. That fact was alluded to in the findings. The tribunal reached its conclusion because of certain events in history. I have already said publicly that I disagree with the tribunal's conclusion. I hope that when the tribunal is enlarged the Government will not pursue its present course---and it is well down that road now---of seeking to resolve

the matter of fishing rights on one decision of the tribunal. That practice should be stopped.

The amendment that has been reported back will assist in mounting arguments to prevent the Government from following the divisive road. I put to the Minister---and I know he wants to resolve the issues---that they must be resolved with sensitivity to the attitude and the mood of both parties in 1840. It is not consistent with article 1 of the treaty, which transferred sovereignty to the British Crown, and, succeeding that, to this Parliament, that the Crown's right should be constrained in the fashion that some would seek. The Minister knows that the path followed at the present time will divide, not unite. He knows that the treaty was signed to unite. When the House is considering the issues it should keep that consideration to the forefront of its concerns. We must find a solution that unites. We must proceed with the issues carefully, and not seek, as is happening at present, to apply one finding of the tribunal in a general fashion across New Zealand, and to run roughshod over the wide-ranging viewpoints and arguments that can and will be advanced. I have no objection to the amendment, but I ask the Minister to pause and think about where New Zealand is going.

NOEL SCOTT (Tongariro): I welcome the support of the Leader of the Opposition for the Bill. I say to him and to the Opposition that not only do Government members welcome the endorsement of the message in the Bill but they also ask Opposition members to take careful note of their own advice to seek solutions that unite. The Opposition member who preceded the Leader of the Opposition in the debate got into a mumbly dissertation about the matter not being what it might be for the good of New Zealanders. This is an important Bill. It is a landmark Bill. It is a specific measure aimed at doing what the Leader of the Opposition exhorts the nation to do---to find solutions that will unite the country, not solutions that will continue, as in the past 140 years, to leave great weeping sores that divide New Zealand and leave so many unresolved problems.

The Bill will provide the machinery that will do much to deal with the problems. The Bill is of great public interest and concern, and even apprehension. It is an apprehension that the Opposition seems determined to exaggerate, multiply, and to pick the scabs off. We must do better than that. A solution must not be the result of fear-raising, but must be the result of careful consideration, as is the core of the Bill. The term ``racial flexibility'' in terms of beliefs and attitudes has come to have an often personal and even sinister implication. It is true for many New Zealanders, and even for quite prominent politicians, that racial flexibility seems to be the core of their belief; that they will change and move as it suits their purpose. Let us stop that nonsense.

Let us examine the Bill as it is reported back by people who were supposedly a part of the process. The Bill does more than just amend the Treaty of Waitangi Act 1975. It recognises the Government's legal determination to recognise that some disputes and disagreements cannot be taken back to that short period of time, because most of them go back further. To leave the issues unresolved is to leave the nation in constant turmoil. The Bill addresses quite seriously this nation's and this Government's determination to provide a mechanism that can adjudicate fairly on Maori grievances going back to the 1840 treaty.

It is true that some people still dispute the wisdom, let alone the legality, of such a commitment. I do not have such a doubt; nor does the Government. I believe that most New Zealanders do not have any doubt about the moral commitment. They believe that that moral commitment is incontestable. A century of inaction, and even antagonism, has left a pattern and a volume of disputes and real and



often perceived injustices that need cleaning up. The Government is determined to do that.

The Bill deals with the practicalities of doing so. I shall deal with the major provisions, with particular reference to the membership of the tribunal. The chief judge of the Maori Land Court continues to be the chairperson of the tribunal. That position is traditional, and there is widespread acceptance of it. The Bill will provide for the appointment of not less than 2 more and not more than 16 more members. The tribunal will be able to sit in divisions. It is true that even if there were 10 divisions there would still be difficulty in resolving all of the disputes; however, the increase in members will do much to speed up the resolution of disputes.

Mr R. J. S. MUNRO (Invercargill): I listened with interest to the member for Tongariro, who described the Bill as a landmark measure. If the amendment dealt with the real issues---which at some point will need to be dealt with---I would fully support the Bill. I have many doubts about the Bill, and I shall go through some of them this afternoon.

Noel Scott: Did the member sit on the select committee?

Mr R. J. S. MUNRO: I did not sit on the select committee, but I have some interest in the matter, and I do not think it is inappropriate to express my views. It is appropriate to read in Hansard the speech made by the father of the member for Southern Maori when the House dealt with the Ngai Tahu claim on 13 December 1944. The question at that time was what the money supposedly to be settled on the Ngai Tahu claim in 1944 was to be spent on. As reported in Hansard, Volume 267, at page 756, the Hon. Mr Tirikatene said that the money was to be used for health, educational purposes, and housing. The same issues are being talked about 44 years later---they do not seem to have been solved. When I read in a July 1988 edition of the New Zealand Herald that 62 percent of New Zealanders are not satisfied with the Treaty of Waitangi I say that the Bill does not necessarily deal with the real issues.

Recently it was drawn to my attention that one of the protagonists in the South Island claim, Mr Tipene O'Regan, was reported in the National Geographic of September 1987 as saying: ``Our aims and wishes are basic. We had these islands, we lost them to the Europeans, and now we want them back.'' Is that the mechanism by which, under a series of arrangements, we are to give back the land to Maoridom? I ask that question rhetorically, because, in essence, that is the real question. I do not profess to know the answer, but I believe that, when 62 percent of New Zealanders say that a 148-year-old treaty cannot be brought into the late twentieth century in its existing form, Parliament has to deal with that matter. There is much concern about this issue, and the mere setting up of a range of extra administrative arrangements to make further recommendations to hear a series of claims, at public expense through legal aid, is not doing Parliament or the nation a service.

In relation to the arrangements under the Treaty of Waitangi, particularly Article the Third, it is clear that Maori people were given the rights of British subjects. In the normal course of events all claims and all arguments that appear before a court are subject to an appeal. It is a rarity not to be able to get an appeal on an important point before a court. Surely that is one of the most important matters in the life of this Parliament; and the point is, how is Parliament to deal with it? When a leading businessman, Mr Hugh Fletcher, says that \$800 million will be needed to consider just one case, that is a matter that needs to be considered. I make no apology for saying that the sad part is that Parliament seems at present to be hell-bent on making matters worse and not better.

The clock cannot be put back---1840 was 148 years ago. The late

Rt. Hon. Norman Kirk, who disagreed with the present member for Southern Maori when the decision was made in the Rowling/Kirk era, was right to arrange for the tribunal to consider claims from 1975 onwards. Limitations do exist under our law, and even in the most extensive cases, at present, we can go back only 60 years. The normal limitation in our law is 6 years, and this measure is very much an exception. The reasons are largely practical, because the evidence disappears and accurate memory fades.

Motion agreed to.

**15 Nov 1988, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 494, pp7927-7933**

**Treaty of Waitangi Amendment Bill** (Second Reading)

TREATY OF WAITANGI AMENDMENT BILL

Second Reading

Hon. K. T. WETERE (Minister of Maori Affairs): I move, That this Bill be now read a second time. The Bill has arisen largely in response to the great pressures imposed on the Waitangi Tribunal. The provisions will assist, first, in dealing with the large number of claims at present lodged with the tribunal, and, secondly, in coping with the further increase in work-load as a result of the passage of the Treaty of Waitangi (State Enterprises) Act.

The intention of the amendment is that those provisions will enable the tribunal to hear claims more effectively. I outline the substantive clauses, and their provisions. Clause 2 amends section 4 of the principal Act in the following manner: the tribunal's membership is increased from 7 to 16 members. The members will continue to be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs, in consultation with the Minister of Justice. In considering the suitability of persons for appointment the Minister of Maori Affairs shall have regard to the partnership between the two parties to the treaty and to their personal attributes, knowledge, and experience of matters likely to come before the tribunal. That provision replaces the specific ethnic requirement in the present Act, and will ensure that a reasonable ethnic balance is retained in the tribunal membership consistent with the availability of competent persons to sit on the tribunal.

Clause 3 inserts a new section 4A into the Act that will provide for the appointment of a deputy chairperson. That person will act for the chairperson when he or she is unable to act for reasons of absence, illness, or other cause. The deputy chairperson must be a judge of the Maori Land Court. A new section 4B will also be inserted by that clause to make it clear that service on the tribunal by any judge shall count as judicial service for the purposes of that judge's tenure and superannuation.

Clause 4 will insert a new section 6A into the Act. That section will enable the tribunal to state cases to the Maori Appellate Court to determine tribal boundaries, whether for land or for fisheries. The Maori Land Court has had extensive experience in that type of inquiry and has built up over the years a body of customary law principles to assist it. The tribunal may also refer cases to the Maori Land Court for decision on any question of entitlement. Such instances may arise in proceedings related to recommendations under section 8A of the Treaty of Waitangi (State Enterprises) Act to return land to a Maori or group of Maori.

Clause 5 amends section 7 of the principal Act to enable the tribunal to defer claims. For example, the tribunal may exercise that provision by deferring all claims of a similar nature to be heard at

the same time. The outcome of that will be both a uniformity of approach and a better use of the tribunal's resources. Clause 6 amends the second schedule of the Act to make further administrative provision for the tribunal. The most notable change is that the fees, salaries, wages, or allowances of tribunal members will be set by the Higher Salaries Commission. That provision brings the tribunal into line with other tribunals and commissions.

Clause 7 amends the second schedule to enable the tribunal to sit in divisions of at least three members, one of whom must be Maori. Each division is to be chaired by a presiding officer who must be either a Maori Land Court judge or a tribunal member who is a barrister and solicitor of at least 7 years' standing. That measure will allow the tribunal to hear a theoretical maximum of five claims at the same time.

Clause 8 will allow the presiding officer to perform most of the preliminary matters leading up to the hearing of a claim, and will encourage greater flexibility in the hearing of claims by releasing the other tribunal members from an obligation to be present throughout to consider the preliminaries, as at present. The amendment will substantially improve the workability of the tribunal and will encourage a balance of membership that recognises and reflects the partnership philosophy of the Treaty of Waitangi.

WARREN KYD (Clevedon): The Bill is important because it deals with matters that are probably the major issues before the country at present---namely, matters of race, and the division of land and fisheries based on race. The country is hung up on Maori issues. The MANA enterprises schemes have lost millions of dollars each year---for example, \$124,000 was spent on a scheme to breed 24 rabbits, whereas it should have bred 1 500 000. Access schemes in Northland have gone wrong, and the Controller and Auditor-General has said that they were typical. Some tribal accounts are 4 to 5 years in arrears.

A green paper was published that recommended devolution---but devolution has gone wrong. Throughout the country, marae after marae is saying ``No'' to devolution. A yellow paper has come out in favour of devolution, but against Maori wishes. There is also the matter of the tribunal. Many Maori are claiming half the land of this country, half the fisheries, and some are claiming half the Government. Very high expectations have been raised. There is a great deal of white fear. The real culprit is the Government and the way it has dealt with issues under the Treaty of Waitangi.

If members do not accept my assertion I refer them to statements made by the Minister of Revenue on 20 July. He said that middle-class New Zealanders were leaving in droves because of growing racial problems, and that they were spending more in Queensland because they were uneasy about Waitangi Tribunal claims and matters of law and order. He said that people would not invest their money in jobs, because they were frightened that claims might be made against them; that the Government is developing an apartheid system, or a separate system; and that the Government's idealism over the treaty might be going too far.

There is widespread apprehension about the working of the tribunal and the treaty even in the Labour Party, as well as throughout the country. That apprehension has been caused largely by the terms of reference of the tribunal. I believe that those terms are dangerously wide. The tribunal has the vaguest terms of any tribunal in New Zealand at any time. It states that, when a Maori claims to have been prejudicially affected by any Act inconsistent with the principles of the treaty, a claim may be made. It states that if a tribunal finds an Act inconsistent it may make a recommendation, or, in the case of a State-owned enterprise, an order. Indeed, in the case of fisheries

it has made an order. It gives carte blanche---wide powers---and therefore it must be looked at very critically. Any amendment must be dealt with very carefully indeed.

The tribunal can recommend the return of vast areas of land---indeed, it has done so. It can bind State-owned enterprises, with, perhaps, all the hydro-electric dams going back to Maori. The tribunal can handle all kinds of matters, but I believe that it is defective in dealing with them.

The first claims brought---such as those dealing with the Raglan golf course and the Manukau Harbour---were reasonable. However, there is now an element of extremism, especially when one considers that all the fisheries are being claimed and that the Ngai Tahu people are claiming all of the South Island. One can understand why apprehension is being built up. There was a time when Governments dealt with claims one by one. There were claims such as those in relation to Mount Taranaki---Mount Egmont---and the Orakei Domain---hundreds of claims throughout history have been dealt with and defused by agreement. The Waitangi Tribunal has created heat, has created argument, and has created a high profile, but has solved very little indeed. Of about 14 decisions, only about 2 have been acted on. People are apprehensive that if claims are brought they will succeed. The tribunal is ongoing---in other words, claims can be brought continuously. At present, 166 claims are before it, and it has been dealing with claims at the rate of one a year. Although there is now potential for 3 tribunals, the tribunal will still take 50 years to deal with the claims before it. The children and grandchildren of members will be visited with the claims of their ancestors for alleged misdeeds. The tribunal does not settle claims; it postpones them instead of dealing with matters that should be dealt with. [Interruption.] It is an adequate response. It is too little, and it should have been dealt with properly beforehand.

There is no limit to the number of claims that people can bring. Indeed, a decision can be made in relation to a claim for a large area of land that does not satisfy the claimants. The claim can be brought again and again, and the hapu and other iwi can come, because once the tribunal rejects a claim other people can make the same claim. There is no finality to the litigation. People want finality and they want disputes to be settled. However, that will not happen with the tribunal. The tribunal is a lawyer's dream, because lawyers know that they may deal with the same claim on and off for 50 years.

Article 3 of the treaty promises that the rights of British subjects will be given to Maori. However, there is no right to be heard before the tribunal. The fishing industry complained about that matter in relation to the Muriwhenua matter. The industry had no right to be heard. There is no right to cross-examine, although that right was promised in the treaty. There is no right to test the results of decisions made by the tribunal---to test its findings. There is a need to test evidence and to cross-examine. Not even the hapu or iwi has the right to cross-examine, and that will bring the tribunal into a bad light. Good, conscientious, and learned people are members of the tribunal, but, if people appearing before it have no right to cross-examine, the tribunal will only come out in a bad light. Maori do not have the right as British subjects to appeal, although those rights of British subjects were promised, and they are a corner-stone of the constitution. In normal circumstances people can appeal against decisions made, but under the legislation there is no appeal right.

The tribunal has become a plaything. Many decisions have not yet been put into effect, although they have been recommended by the tribunal. I refer to the Manukau Harbour decision, the Taranaki reef decision, and the Waiheke Island decision, on which no action has

been taken. The Government is not acting when it is inconvenient. The Government will put off setting the claims until 1990, when perhaps there will be a National Government to deal with them. The Government is happy to overrule the tribunal's decisions, and one example of that happening is the Maori Fisheries Bill. The Waitangi Tribunal has checked the Government in its programme to devolve fisheries. The Maori Fisheries Bill purports to cancel the tribunal's decision and the bringing of future claims. In other words, if the decisions are inconvenient the Government ignores them. However, it cannot stop the generation of heat, hatred, and fear by the tribunal.

When it is convenient the Government negotiates behind closed doors; it ignores the tribunal. It has already negotiated with Ngati Awa, and it appears that 1197 hectares will be returned to Ngati Awa and a large sum will be paid in compensation. The tribunal is being bypassed; the Government makes its own decisions. Indeed, the Maori people are so frustrated by the tribunal that they will bring their claims to the High Court under admiralty law, aboriginal law, and the Treaty of Waitangi, because they see the tribunal as ineffective. The tribunal is too slow, and it is a lame seagull. People want the right to cross-examine and the right to appeal, and they want less delay. Although those rights are denied by the tribunal they are not included in the Bill.

I shall consider some of the provisions contained in the Bill. The Bill removes the Maori majority, and that is good. When the tribunal was set up in 1975 at the instigation of Mat Rata it did not have a Maori majority. In 1986 the Government instituted the Maori majority. Now the Government has conducted polls and found out that people are criticising the tribunal, so it has done a U-turn and abolished the Maori majority. That is a good decision but it indicates grave inconsistency, grave irregularity, and pious hopes, and it does not give any confidence in the way the Government is dealing with Maori issues.

The tribunal has spoken of a partnership between the parties, but which partnership between which parties? The original partnership was between the British Crown and Maori chiefs. Neither of those parties exists now, yet the word ``partnership'' is still used. Does that mean that everything is to be shared fifty-fifty? That expression is vague, meaningless, pious, and likely to confuse and lead to bad decisions, because it will add an extra wheel to the bicycle. Clause 2 provides that the number of members of the tribunal shall be not less than 2 or more than 16. Opposition members applaud that provision. Perhaps it will give the tribunal more muscle and allow it to deal with three claims a year. However, claims will still be brought 50 years from now at the very least.

The tribunal was established to settle disputes, but it has actually led to a proliferation of disputes without dealing with any of them. The tribunal is creating heat and tensions and leading to false expectations. It must be the most cost-ineffective tribunal ever set up, because it deals with only one claim a year. The tribunal will be an ongoing body, and will probably cost \$1 million a year. Only three disputes have been settled, and several are in limbo. The tribunal has wasted, and will go on wasting, money.

I am concerned at the tribunal's right to meet in private. Justice should be seen to be done in open court. If claims are dealt with in private, people will be suspicious and will feel they are not being listened to, and more disrespect to the tribunal will result. In accordance with Maori custom not all tribes allow women to speak on the marae. Te kawa o te marae gives people the right to speak regardless of sex, and today that is the way everyone thinks it should be, but has the tribunal the right to dispense with and overrule Maori custom in favour of present-day thinking? Should the

decision not be made in a Maori way rather than a modern-day way, and be left to the marae involved?

There are many grave defects in relation to the tribunal, none of which are dealt with by the Bill. The tribunal will create more and more heat and will come more and more into disrespect. It will solve very little, but will create false expectations on the part of Maori and will do little to relieve the fear felt by non-Maori. The Bill does not deal with the issues relating to the tribunal, and is defective in many ways.

Dr GREGORY (Northern Maori): In rising to speak to the Bill I must say that to understand any Bill that deals with the Treaty of Waitangi one must have a sound knowledge of what the treaty is all about. That is a very important precursor to any discussion of legislation that touches on the Treaty of Waitangi. Secondly, in relation to the previous member, it would be fair comment to say that with his legal turn of mind he needs to make some adjustments in the way he relates to the Bill. The Bill is probably a corner-stone of New Zealand's judicial system, and I use that word advisedly, because to me the term now encompasses, on the basis of the Act, another form of legal expertise that I refer to as the Maori one; and it is in relation to that matter that the member has to make major adjustments to his thinking. Maori did have a system of law that was obviously part of the culture in which it existed.

The member referred to the tikanga, or kawa, o te marae in relation to women speaking on that institution. Generally speaking, women do have a right to speak within the confines of a marae. The matter in which one would need to pay particular attention to the so-called tikanga or kawa would be the mihi, the ritual that precedes such discussions. It is in relation to that matter that some marae are stringent about the roles that male and female play. I recognise no difficulty with the Bill in that respect. It makes specific reference to the issue of sex and the right to speak, subject to the understanding of what is known as the kawa of a marae. I bring that matter to the attention of the member and of the House because it is a matter that is subject to great misunderstanding, and one that is fraught with unjust attitudes to the procedure of the Waitangi Tribunal.

I reinforce what the Minister in charge of the Bill said. The Bill has arisen out of legislation dating back to the Labour Government of 1975, at which time the Waitangi Tribunal was established with a small membership of 5 with power to act only in relation to grievances dating from 1975 forwards. Of course, it was an absurdity, in the sense that the vast majority of issues in relation to the treaty pre-date 1975, and the tribunal was almost a hung jury in terms of what it could do. In its wisdom the Government has seen fit to modify the Act. Treaty of Waitangi issues dating from 6 February 1840 until the present day will be able to be considered. Of course, as Opposition members would say, that has opened a can of worms. However, that is not what the Government is on about, and it is not what most Maori or pakeha believe---right-thinking people of the land, who are concerned about the issues of justice, equality, and equity, and all of the issues that are the corner-stones of a sound, harmonious society.

When listening to Opposition members, one cannot help thinking that, by trying to convey a sense of doom and gloom to the people at large, they are not being honest with themselves. The Opposition is spreading a lot of unease amongst people; in essence, it is inciting the sources of racial tension---something that many Opposition members rarely do unwittingly. I suppose they were being political when they spoke about the Bill, but they took the opportunity to create dissent and to gain support in an unfair way. The Bill, of

course, is not intended to create racial tension. When Opposition members stoop to talk about rabbits, and the number that will be produced at the end of the year, I wonder about their mentality in even suggesting the idea. If the member for Clevedon is interested in rabbits I might be able to provide him with some pocket-money so that he can establish a rabbit farm somewhere. He will then be able to examine all of the mathematical calculations to help him in that exercise. The issue of rabbits has no relevance to the Bill, and perhaps I have dwelt on that issue too long.

The Bill has resulted not from a Court of Appeal directive but rather from issues emanating from a case that was put before the Court of Appeal by the New Zealand Maori Council. During the course of the discussions and decisions it was patently clear that the Waitangi Tribunal as currently constituted would not be able to cope with the large number of cases put before it---about 150 cases to date. Significant modifications should be made to the membership of the Waitangi Tribunal and its mechanics to enable it to continue with its work and to overcome the work-load.

I turn to the mathematics mentioned by the previous speaker, as about two cases a year have been actioned by the tribunal. That is a very small number. I think the member said that if the number of cases increased to 150 it would take 40 to 50 years to deal with them. The tribunal's membership will increase from the present 7 to 17, including the chairman, who would be the Chief Judge of the Maori Land Court. The Bill provides for the tribunal to divide into divisions with a minimum of three members in each division, and a maximum of seven in each division. Clearly, with that kind of formulation the tribunal would have the opportunity to act simultaneously on a maximum of five cases. If one takes the minimum number of 3 divisions, and the total membership of the tribunal of 17, one would have 5 divisions with 3 members each able to pursue the various cases before them. On that basis it should be possible to deal with most of the cases in about 15 years.

Any rational person would realise that although initially there would be a large backlog of tribunal work-load the number of cases would diminish as the years went by. The number of submissions before the tribunal would reach a plateau, and at that stage the tribunal could no doubt cease to exist---that is a possibility. That is the important aspect of the Waitangi Tribunal, and I am sure that members cannot disagree with the need to alter its composition and the way in which the tribunal acts if it is to process the large number of cases before it.

It was suggested to the select committee that if the tribunal is to be divided into divisions of three or seven members each division would act independently and somehow come down with decisions that might not be consistent. I do not buy that argument. The Bill allows the chairperson of the tribunal to select the appropriate chairperson for each division, and I am sure that in making those decisions he or she will have in mind the need to ensure consistency in the decision-making process. In the light of the mana that the tribunal has recently established for itself in our society that fear will be of little consequence. The Bill is important.

I want to deal now with the racial issue. Both the news media and the member who preceded me have noted that in the past the tribunal has been considered to be racially biased. The member referred, in particular, to the increase in the tribunal membership from four to seven, with four of the members having to be Maori. I suppose that to some extent, because of the reality of our society, there is still a degree of suspicion between Maori and pakeha. I should like to think that that relationship is improving. It would be consistent with the nature of the submissions before the tribunal that its members need

to be conversant not only with one of the major issues that the member raised---tikanga of the marae---but also with the whole spectrum of Maori culture.

The people who would be most conversant with such matters would, in the first instance, be Maori, although I am not saying that there are not some pakeha people who have a considerable degree of understanding. However, mostly they would be Maori. Because the mana of the tribunal is very much at stake it behoves the tribunal to act wisely and justly in its deliberations, regardless of whether its members are Maori or pakeha. I am sure that with the present tribunal there is not one instance of anything else happening.

The Leader of the Opposition spoke about the racial bias of the Waitangi Tribunal. He was asked to provide one instance of the tribunal's actions that would show such a bias, and it was noted that he did not answer that question. While the Bill does not make a distinction, contrary to what the member who preceded me said, it still does not prevent the tribunal from having a majority of Maori members. I am sure that, when selecting the tribunal's membership, the Minister of Maori Affairs will select individuals that he thinks are best suited to carry out the role. It may well be that he selects 17 Europeans or pakeha, or 17 Maori, or maybe some of each. Whatever his selection, it will be on the basis of the expertise and the sound judgment that the people involved can bring to the tribunal. I have no doubt that that will continue to be the attitude of the Minister.

The Bill is important when one considers what is purported to be happening out there by some well-meaning, and in some instances not well-meaning, people who want to raise the matter of racial tensions in society. It is only when those problems are tackled in a rational manner that we will get a society in which I would be quite content to sit and have a tte--tte with the member for Otago without feeling that those tensions exist. Until those issues are dealt with on the basis of a just and equitable society the tensions will continue to exist. The Bill has the formula to achieve much good in society. I have no doubt that the future course of events will prove the worthiness of the Treaty of Waitangi.

Hon. Warren Cooper: That's optimistic.

Dr GREGORY: I tell the member that time will indicate the positive actions taken by the Government. The other aspect that I want to touch on relates to the Maori Appellate Court. The matter was raised in some of the submissions to the select committee---why bother having the Waitangi Tribunal when the Maori Appellate Court can bypass the tribunal in decisions that relate to grievances made under the Treaty of Waitangi? The Bill quite clearly specifies the parameters within which the Maori Appellate Court will be able to act. The particular point that needs to be highlighted relates to tribal boundaries. That is a big responsibility. The Maori Appellate Court, with its expertise, would reduce the possibility of an unjust decision being made. That is an important part of the function of the Maori Appellate Court.

Opposition members referred to fisheries. That matter is covered under the customary law principles, and it can be taken into account by the Maori Appellate Court. The chairperson of the tribunal is the Chief Judge of the Maori Land Court. At present that position is filled by a Maori, but it need not be in the future. The tribunal will have a maximum membership of 17, including the chairperson, and the composition of the tribunal could vary. I am sure that the tribunal members will be chosen on the basis of their expertise in relation to Maori law and the Maori way of life. The Minister will make a decision in relation to that composition.

Debate interrupted.



The House adjourned at 10.30 p.m.

**22 Nov, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 494, pp8217-8224**  
**Treaty of Waitangi Amendment Bill** (Second Reading cont.)

TREATY OF WAITANGI AMENDMENT BILL

Second Reading

Debate resumed from 15 November.

WINSTON PETERS (Tauranga): The House is discussing a Bill tonight that could best be described as legislation that the Government has raised but now no longer wants to discuss. On Tuesday night a week ago the matter was brought to the House at 9.45 p.m., and it is about the same time tonight. The Bill contains matters that the Government raised in the past 3 years, but now, because of its acute embarrassment, it no longer wants to discuss them. Those matters are the last matters discussed each parliamentary night so that the rest of New Zealand---those who have gone to bed, those who are not working, and those who are not listening to the radio---are not privy to the messes the Government has involved itself in. That is the present position.

The Bill removes the Maori majority on the tribunal and increases the number of tribunal members from 7 to 16. It is theoretically possible under the Bill for five separate tribunals of the Waitangi Tribunal to be sitting at the same time. That is the total change. The Bill is receiving its second reading at a time when Maoridom is in absolute chaos; no reasonably informed Maori in New Zealand will deny that. No reasonably informed European in New Zealand will deny that. Maoridom is in chaos, and the culpable party sits opposite. The Government no longer wants to discuss the results of its architecture in terms of constitutional proposals. Morale in the Department of Maori Affairs is at an all-time low. Morale is so low that there is a record list of transfer requests; the list is so long that the Government is using taxpayers' and public money for bonuses to keep those people on. There is chaos for Maoridom everywhere one looks.

Trevor Mallard: Does the member oppose it?

WINSTON PETERS: Of course I oppose it. I will not have the assets of this country divided up on the basis of race; nor should there be people in the Public Service who are paid more money on the basis of race. It is demonstrably wrong, and every reasonable New Zealander knows that it is. However, because of the Government's acute embarrassment it is trying to hide the results of its cavalier and unheeding attitude. The Government was warned month after month and year after year---

Hon. K. T. Wetere: Is this in the Bill?

WINSTON PETERS: The Minister wants to know what is in the Bill. Can I give any better example of what is wrong with Maoridom today? The Minister of Maori Affairs wanders into the house 5 minutes after I have given a prcis of the Bill and asks what is in it. New Zealanders want to know why the Minister of Maori Affairs is getting \$108,000 a year, a Government house, a Government car, and all the ``perks'' of office if he does not know at this stage what is in the Bill. I think the Bill might have his name on it---[Interruption.]---no, it has his minder's name on it, the Minister of Justice. If it were not the Minister of Justice it would be the Minister of Finance, and, if it were not the Minister of Finance it would be the Minister of State Services, because those three collectors of people run Maoridom today, and it is a disaster.

They could not find an easier job than running Maoridom over the top of the Secretary for Maori Affairs and the present Minister of Maori Affairs. Maoridom is screaming out for equality. Maoridom knows

that it can be equal, but at the head of Maoridom today are two people who cannot perform and who should have been replaced a long time ago. Maoridom deserves no less. I challenge the Minister of Police, who has sought to attack me three times---and that is twice too often---to explain what he is telling his people in Rotorua.

Paul East: He's on the team of the Associate Minister of Finance. He's one of the bootlickers.

WINSTON PETERS: He is the rubber-stamp carrier---a lion on the marae and a lamb in caucus. All of the Minister's dreams of Maoridom tell him that what is going on now is wrong, but what does he do about it? Does he ever protest and say to the chiefs of Maoridom, ``We can and must do better''? One cannot have the captain not knowing where the ship is going. The sailors are OK, and the crew is OK. If there were a decent navigator and captain Maoridom would certainly make it to its home shore. The Maori race came all the way from Hawaiki, but how can one travel by stars that are under water? Maoridom is going from crisis to crisis, and what does it get? It gets the Treaty of Waitangi Amendment Bill. In the space of 10 years Government members have shown their inability and exhibited the classic malaise of socialists---they do not listen; they always know better than anybody else. In 1975 there were three tribunal members but no Maori majority.

Hon. K. T. Wetere: The member wasn't here the other night. He was on television, so his mates supported the Bill.

WINSTON PETERS: I know that the Minister watched me on television---half the country did.

John Banks: He watched it on the video in the library.

WINSTON PETERS: Did the Minister like it? Was it good? [Interruption.] I know it was good. In 1975 the Hon. Matiu Rata brought a Bill into Parliament called the Treaty of Waitangi Bill, which did not have a Maori majority on a three-person tribunal. In 1985 there was some kind of ethnic ``road to Damascus'' experience and the Government decided that there must be a Maori majority on the tribunal. Three years later the new Bill states that a Maori majority is not needed. What is going on? Is today's rationale to be stood up against the 1985 rationale? Maoridom deserves an explanation and, while Parliament is at it, why do we not take the rest of New Zealand---the 88 to 90 percent of people who are non-Maori---with us? Are we going to have one country or will we have diverse, segregated peoples all going different ways? What hope do we have on that path against the great challenge of the Pacific Basin? Members know that there is no course of action down that road. The Minister of Police should explain himself. He spends most of his time on marae talking about me. The Sunday News recently carried out a poll amongst Maoridom, and where did the Minister of Police come?

John Banks: Where?

WINSTON PETERS: He polled five times worse than I did, and he was the best member on the Government side. If I were he I would not run down the member for Tauranga; I would start listening to what Maoridom was trying to tell me. The crisis is exacerbated by a series of Government proposals that are not helped by the Bill before the House. There is a crisis in MANA enterprises and in Maori Access programmes. Fewer than 16 of every 100 trainees on Maori Access programmes graduate to a job. If my 39 colleagues were in charge of a ministry that performed like that they would voluntarily offer their resignations. It is a matter of pride.

John Banks: Like the Associate Minister of Finance.

WINSTON PETERS: The Associate Minister of Finance has his problems. Against the great issues in Maoridom today the one with the most importance in the past month has been whether the Minister's department should fund the return of some kumara from Japan. There is

a verse in the Bible that states: ``Where there is no vision, the people perish.'' All humour aside, that is what is happening to Maoridom. There is no vision, no accountability, no performance, and, above all, no lusting after equality. I see Maori people on the rugby league paddock, the rugby union paddock, and on the netball courts. [Interruption.]

Hon. K. T. Wetere: Tell us about league.

WINSTON PETERS: I do not mind talking about rugby league, because some of my colleagues who are in a less fortunate position---such as Government members who spend most of their time playing a different form of billiards from the one that everyone else plays---laugh at me for being asked by my cousins in the New Zealand Maori rugby league team to give them a motivational talk.

Hon. K. T. Wetere: Ha! Ha, ha!

Hon. Peter Tapsell: Ha! Ha, ha!

WINSTON PETERS: Government members may scoff at that, but there is a lesson to be learnt from our rugby league, netball, and rugby union teams. Every Maori hitting the paddock says, ``I'm good enough to represent New Zealand; don't ever give me second-best treatment. I don't ask that you lay off me in the tackle; I don't ask that you give me privilege at half-time. Put me on the paddock---I can perform.'' Thousands of Maori people are saying the same today, but the captain says, ``No, I want to be treated differently. I want privileged treatment. I want to be Uncle Tom all the way for the rest of my life.'' Maoridom rejects that policy, and so must the country. The Bill---

Judy Keall: It's sad.

WINSTON PETERS: It is sad. It is abysmal. The member should go to the East Coast and tell me that it is not sad. She will see Maori pitted against European. It is a place where violence is happening day after day. Child molestation is happening, and so are rapes of the kind Maoridom never dreamt of in its wildest nightmares. It is sad, all right. I am sick and tired of that sickly white liberalism that sits on its backside, takes \$54,000 a year, but does nothing, month after month. Government members are an abomination of the word ``labour''.

An Hon. Member: He's fired up.

WINSTON PETERS: Of course we are fired up. The whole shape and character of our country is being changed by the hour, and the culprits---the architects---sit on the Government benches and scoff and laugh. I tell the arrogant member for Glenfield that sooner or later even the best homes in her suburb will feel the results of that inertia and inaction by the Government. Maoridom is talking, but the Government is not listening. The chairman of the Maori Affairs Committee says so---and he is not a European.

Dave Robinson: I'll bet they're not listening to the member.

WINSTON PETERS: The anger-management consultant from Palmerston North says that he is not listening to me. He should take a drive round Otara and tell me why violence is increasing by the day.

Mr DEPUTY SPEAKER: Order! The member is making a powerful speech, but it is not very closely related to the content of the Bill. The Bill deals with the membership of the Waitangi Tribunal. The member is entitled to discuss the broad principles of the Bill, but he should relate those principles continuously to the points of the Bill. I should appreciate it if he would do so.

WINSTON PETERS: I intend to do so. However, before I do, I point out that Maoridom is not being listened to. There is no better authority for that claim than the chairman of the Maori Affairs Committee, who is a Maori and a member of the Labour Party---namely, the member for Northern Maori. That is my testimony. They are not my words---they are the words of the member for Northern Maori. Every

warning I have been given has been reinforced by the Minister of Revenue, who has said that New Zealanders are leaving in droves, and that one of the reasons is race relations. I have mentioned the U-turns in the Bill. In 1975 there were 3 members---no Maori majority; in 1985 under a new Labour Government there were 7 members---and a requirement for a Maori majority; in 1988 there are 16 members---and no Maori majority.

What is worse is that the Treaty of Waitangi guaranteed to Maori that they would have equality, that they would be citizens of New Zealand, and that they would have all the rights of British subjects. In a court of law those rights comprised a right to be heard, a right to cross-examination, and the right to appeal. Those rights were guaranteed by the Treaty of Waitangi. However, no such rights are contained either in this Bill or in the primary legislation.

Judy Keall: He's lost his place.

WINSTON PETERS: No, I have found it. In a proper constitutional democracy---the shape of which cannot be formed under such a Bill---for a British subject, as I understand it and as the chiefs who signed the treaty on 6 February 1840 understood it, there is a right of cross-examination, a right to be heard, and a right of appeal. Those rights are not contained in the Bill. That is a legal and constitutional outrage. The Government is lurching from crisis to crisis because it will not listen.

Hon. K. T. Wetere: Will the member vote against the Bill?

WINSTON PETERS: My answer is that the Opposition will categorically and unequivocally oppose the Bill right through to the third reading if the Government does not listen to amendments put forward by the Opposition. Every Opposition member will vote against it; what is more, 80 percent to 95 percent of the country will be behind them.

Hon. K. T. Wetere: The member's on his own.

WINSTON PETERS: That is not what people say. When I go to a marae people say: ``Koro was here last week and we're still laughing.'' The Treaty of Waitangi guaranteed those rights and---

Hon. K. T. Wetere: The trouble is that the member won't visit a marae with me.

WINSTON PETERS: The Minister says that I will not visit a marae with him. I challenged him month after month to appear with me on television, but he would not appear; the Secretary for Maori Affairs would not appear; not one person would front up. They know what it would be like. I understand. It would be like taking candy from a baby.

Hon. K. T. Wetere: Because the member can't speak Maori---he runs away from it.

WINSTON PETERS: The Minister said something about the Maori language. Maori today need someone who understands the language of politics; someone who is not prepared to be a doormat for Treasury; someone who remembers the pride, independence, and resourcefulness of his ancestors, and who wants to live up to that heritage; not someone who is treated with derision and who is living in an environment of derision. After all these months, and after all my warnings, I have come to the conclusion that the matter is a mad machiavellian plan of the Government, which wants to wind up Maoridom and to wind up the country. It will have every possible claim---166 claims are in already under the Bill---and in 1990 it will leave it all to an incoming National Government.

Hon. K. T. Wetere: Why doesn't the member ask his sister for a report? She'll give him an up-to-date report.

WINSTON PETERS: I would never compromise any relation of mine in the Department of Maori Affairs by asking for any information. The Minister knows that that is true because even the police could not

find where the leaks were coming from when he asked them. The Minister is no further ahead. When the police reached suspect No. 30 they reached one of my relations. They thought that he had to be the guy; the only trouble was that he was out of the country when the Maori loans affair story broke. That was a minor piece of research that had not crossed their minds.

The Opposition will be left with a legacy of litigation. It will oppose the Bill because the country has one future. We can keep our religion, we can keep our gender; and we can keep our race and our culture, but at the end of the day we have only 1 path: 3 000 000 New Zealanders against the rest of the world; New Zealand first, second, and third. If anyone in Parliament or in the country were fool enough to believe that New Zealand could follow the segregated path being advocated by the Government that person would be wrong. We need each other for a unified national purpose. [Interruption.] For goodness' sake---for the first time in 3 years the Minister should take the issue seriously. He has never seen his race in the position that it is in today; he has never seen so many young radical Maori singing the hymn of hate; and he has never seen so many young Maori asking what New Zealand has going for them. Those young Maori do not believe that there is a future for them, although they should believe that there is a future. The message of the Opposition---and the message that it will advocate in the next 22 months---is that there is a place for all those young Maori as people who contribute to the growth and future of New Zealand. That is the way the Opposition will go. It will not support the Bill, because the legislation does not offer any course or refuge in relation to economic and social development.

I shall close by telling the Minister that if anything he has said by way of interjection were true it would not be advanced by his objectives, because Maoridom would not act in such a way. On a marae---which the Minister claims to understand, although tonight he has exhibited his lack of understanding---he would know that if his arguments had any power or force the mindless repetition of such meanderings in the House would not help Maoridom one iota. At the end of the day there is an old Maori saying, the English version of which is that when the old net is shot full of holes the new net goes fishing. That net is getting ready, and in 1990 the Opposition will make its first cast.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): The member for Tauranga has been applauded by Opposition members, but they will have to do more than applaud in his favour; they will have to prove their support of him when it comes to the vote for the leadership. We may see him in a position in which the support of his party will promote him to the top. However, that remains to be seen. He made a very entertaining speech, and I can understand his concern about the economic position of Maori today. I consider that the etiology of that great problem started during many years of disregard for Maori education by the National Government when little was done to advance the level of Maori educational achievement. Today New Zealand has that legacy. The member for Tauranga should acknowledge that fact of history; he should also acknowledge a certain culpability in relation to the problem that we find today.

I should like to address myself to the Bill, the second reading of which the House is now debating. The Bill amends the original 1975 Act that brought the now well-known Waitangi Tribunal into being. My former colleague the Hon. Matiu Rata introduced that legislation, and as a Minister in the third Labour Government I gave it my full support, although I considered that its potential scope was greatly limited because it related only to legislation and policy introduced into Parliament from that year onwards. Under the fourth Labour

Government the period of jurisdiction of the Waitangi Tribunal has been made retrospective to 1840. Considering that the Treaty of Waitangi was signed in that year, retrospectivity to 1840 is logical. However, there would have been merit in taking that retrospectivity further back to 1833. There is an entire study to support such a suggestion, but I will not go into that matter during this debate. However, so much happened in the years between 1830 and 1840 that there is validity in the suggestion that the Bill should be taken back to that period.

The provisions of the Bill are retrospective to 1840, and go some way towards satisfying the yearnings of Maori over many years. I must add that the 1975 date was an aspect of the original Bill about which I had a vigorous difference with the Hon. Matiu Rata when he brought the proposal to Cabinet. However, I supported the newly created and exciting concept that was being introduced into New Zealand's judicial system.

In 1985 the membership of the tribunal was increased to six persons, at least four of whom were to be Maori, plus the Chief Judge of the Maori Land Court, who was also chairperson. Under the amendment being debated the membership of the tribunal shall be not less than 2 and not more than 16, with the Chief Judge of the Maori Land Court continuing as chairperson. Also, there is no longer the requirement that at least four members of the tribunal be Maori.

Under the provisions of the proposed new subsection (2A) of section 4 in clause 2, the Minister of Maori Affairs, in considering the suitability of persons for appointment to the tribunal, is required to have regard to the partnership between the parties to the treaty. Another important provision introduced by the amendment empowers the chairperson of the tribunal to appoint a judge of the Maori Land Court as a deputy to the chairperson. It will be possible for the authority to divide its increased membership among more than one case. The objective of that change is to expedite the effective work of the tribunal so that it may work through a backlog of cases. I congratulate the Minister on making that possible.

The third change is introduced by way of a proposed new section 6A contained in clause 4. Under the provisions of the proposed new section the Waitangi Tribunal may refer to the Maori Appellate Court for decision any question arising in proceedings before the tribunal with respect to a question of fact, of Maori custom, of Maori usage, or of the rights of ownership of any particular land or fisheries according to customary law principles of take and occupation or use. That is an interesting amendment that Maoridom has wanted to see implemented in law for a long time.

Finally, the tribunal may refer to the Maori Appellate Court a question calling for the determination, to the extent practicable, of Maori tribal boundaries, whether of land or fisheries. A new provision is included allowing the tribunal to refer to the Maori Land Court for decision any question that arises in any proceedings before the tribunal relating to the return of land to any Maori or any group of Maori pursuant to the provisions of the proposed new section 8A in clause 4 of the Treaty of Waitangi (State Enterprises) Bill. Furthermore, there is a right of appeal to the Maori Appellate Court against any decision of the Maori Land Court under that section.

Those are the principal changes brought in by the amending Bill. I have referred to the maximising of the tribunal's effectiveness, given the backlog of cases waiting to be considered by the increase in membership and the capacity to divide into more than one group made possible in the amendment. The proposed new section 5 in clause 7(1) provides that the persons to constitute the tribunal for the purposes of any sitting shall consist of a presiding officer, who may

be either the tribunal chairperson or a judge of the Maori Land Court appointed by the chairperson, or a member of the tribunal appointed by the chairperson to act as a presiding officer; and such other members of the tribunal, being not less than two and not more than six, as are appointed by the chairperson.

One implication of the Bill is the obvious need for more legally trained Maori. At least two submissions sought support for an increased number of Maori lawyers who shall be trained with the expectation that they will become judges of the Maori Land Court. I applaud that proposal, and the scheme of training should start forthwith. For the scheme to become a reality a recruitment campaign should be conducted at the end of the school year, aimed at secondary school leavers who can speak Maori and who are interested in training in law. The requirement for a combined language facility and capacity to train in law will mean that there will be only a handful of potential candidates each year. They should be provided with every incentive to train. They may need to move away from home in order to study law, and they should be supported in relocation by the provision of accommodation costs. I applaud such a training and recruitment programme. I know that the Minister of Maori Affairs recognises the wisdom of the scheme and will pursue it.

The other implication of the Bill is the need for extra support services for the tribunal. At present the tribunal is shackled by an inability to cope with its present and future work-load. There is an obvious need for an injection of increased research funding, and there is a glaring need for increased administrative resources. At present the tribunal can commission research only after a claim is filed. There is, however, a greater need to fund research to enable groups to file claims or to negotiate them. No tribe should be expected to advance a claim or negotiate a settlement without receiving competent research advice on appropriate matters. Similarly, the tribunal should not be expected to adjudicate on a claim with an inadequate data base. Of course, the control and funding of all research should be carried out through the tribunal. That scheme, in my humble opinion, would be more cost-effective and prudent than permitting direct funding of tribes. I have prosecuted cases before the Maori Land Court throughout my career---gratis, of course, to my constituents---and I believe I know what I am speaking about. I reiterate the point that such a method would be much more cost-effective and prudent than permitting direct funding to tribes.

The tribunal chairman, Chief Judge Durie, has pointed to the need for research quality standards. As a researcher myself I whole-heartedly endorse Chief Judge Durie's view. I am sure that he would accept the need for research by tribal groups, but that research should be done by the appointment of researchers by negotiation between the tribunal and the claimant groups. Quality controls are needed in the spending of public funds on research, and land claims require multidisciplinary research in, for example, Maori and European culture, history, and law. Procedures, whether parliamentary, bureaucratic, legal, or tribal, need to be known and understood, as do principles of loss quantification, economic and town planning, comparative overseas developments, land recording systems and surveys, with recourse to departmental files, parliamentary papers, land records, libraries, archives, judgments, statutes, regulations, and the like.

It is not adequately understood that multidisciplinary expertise is required to deal efficiently with Maori matters. Even a Maori member of Parliament has to have those skills as part of his or her wide case-load, and should know them, have command of them, know the resource material, and prosecute before the Maori Land Court. It is monocultural not to perceive the depth and the expanse of extra

expertise. A competent and efficient Maori member of Parliament has to have that expertise, should have it---and, in fact, needs to apply it. I can speak about that with absolute authority, and my comments relate to an issue with which I have been familiar for many years. I reiterate that the needs of the Waitangi Tribunal for adequate funding for support services and multidisciplinary expertise are urgently required.

The Bill will greatly facilitate the efficiency of a tribunal that has established itself over the years since the original legislation was introduced in 1975 as a body of considerable mana, prestige, expertise, and dignity. I welcome the Bill, which increases the number of tribunal members. If Opposition members fully appreciated the importance and significance of the Bill they would not oppose it. They should understand that the tribunal is needed, that it is competently managed, that its members have mana, that they are respected by the Maori people, and that satisfaction of the list of Maori land grievances is an important prelude to the improved race relations that the previous Opposition speaker seemed to appeal for. Those claims are of long standing. Their resolution is inevitable and I regret to tell the House that without that resolution the mounting frustration of learned, thoughtful people, and even those who are not so learned, will continue to exacerbate the very fragile balance in race relations between Maori and pakeha in New Zealand. Those matters must be resolved with impeccable judicial perceptivity and perspicacity, and must be resolved with expedition. It pleases me to commend the Bill to the House---to the Government and Opposition alike.

Hon. V. S. YOUNG (Waitotara): These days I always listen to the member for Southern Maori with great interest. However, she did not answer the questions posed to the House by my colleague the member for Tauranga. What is the solution to the nation's race relations problems that the tribunal can provide? What decision must the tribunal make that has not been considered before?

The honourable member for Southern Maori said that there are longstanding grievances. Indeed, there are. Let me ask her this question: how many times must the House solve those grievances? It was her father who in 1944 welcomed the Ngaitahu Claim Settlement Act and described it as a most satisfactory arrangement. The Hon. Mr Tirikatene (Member of the Executive Council representing the Native Race) expressed his gratitude and appreciation on behalf of the Ngai Tahu people for the resolution of a long-held grievance. The member for Southern Maori knows that \$20,000 a year was to be paid for 30 years. She also knows that when she was in Cabinet the 30-year limit was removed and the \$20,000 a year was to be paid in perpetuity.

That was a win for her, but I want to say to the honourable member that she knows of the problems in Taranaki, and knows that a similar arrangement was made in 1944 to resolve longstanding claims about the confiscations in that province. The resolution was legislated for by a Labour Government and was welcomed. I ask the member and the Minister how many times the House, the tribunal, and any judicial body must make a determination on the same conflict of opinion. The matter has been resolved before.

The Waitangi Tribunal is empowered to go back and reconsider any grievance of the past 140 years. That is divisive in our community, and, worst of all, it raises the expectations of Maori at a time when their prospects have never been damned so much by the Government in power. On the one hand, Ministers take away the jobs of Maori and, by the tens of thousands, put them in the ranks of the unemployed; on the other hand, the Government creates a tribunal to reconsider disputes that have been resolved in the past---those that have not been resolved can be considered case by case. The Opposition has no



argument with the powers of the Waitangi Tribunal to consider matters of today, but when it is asked to exercise its authority retrospectively the nation is unnecessarily divided. The solutions are not apparent, nor can they be delivered.

Let me tell the Minister of Maori Affairs what the Wanganui Chronicle stated in its editorial of 13 July under the heading ``Stop it now'': ``Government policies that appear determined to turn our fishing industry, much of our land, and a host of other things over to Maori ownership and control must stop. The Waitangi Tribunal is making decisions on scores of divergent cases. It is dealing with them on an individual basis and without regard to wider issues. As the tribunal is enlarged and able to sit in four or five different places at the same time so will that problem be exacerbated....It is handling its cases legally, but in a manner that leaves many people unhappy with its procedures, and the Government appears to be willing to accept its recommendations without second thoughts and without any significant input from the people most affected. Plans appear to have been advanced to disinherit the fishing industry.' ' We have been through that matter, and there has been some kind of retreat by the Government, but not on the principle of dividing the nation's resources on the basis of ethnic origin. That principle has not been retracted.

I am 100 percent with the statement made by the member for Tauranga that there is no argument in favour of dividing the resources of this nation on the basis of ethnic origin. If New Zealand steps down that track it has a very sorry future. That may well be the intention of the Minister of Maori Affairs, but I suspect not. It could be the intention of some who support him. We must not walk down that track. The answer to the problems of this nation lie with economic and educational opportunity. Employment, jobs, skills, and sharing in the wealth of the nation will produce equality in the country and equality of employment. That will not come from the deliberations of the Waitangi Tribunal as it pores, year after year, over the history of errors and omissions of those days that are almost impossible to correct today. The Minister knows quite well that as Minister of Lands I dealt with many very delicate and longstanding issues.

Hon. K. T. Wetere: Like the Raglan golf course!

Hon. V. S. YOUNG: The Minister takes the words from my mouth. The golf club has just taken up a 50-year lease, and not one of the Minister's colleagues did a thing about that. It was apparent to me from the time I saw the problem that there was only one solution and that was to relocate the golf club. Therefore the land was acquired. The National Government of the late 1970s returned the bed of the Arahura River---which had been excluded from the Westland purchase 140 years earlier---to the ownership of the Maori people of the region. That was quite proper. The National Government corrected the anomalies and injustices of the ceded lands that were used or occupied for mining purposes in the Coromandel. None of the matters is easy to handle, but each one must be dealt with sensitively.

When a tribunal is charged with the responsibility of accepting and naseam any claim for injustice, or a claim on the ownership or the transfer of land between Maori owners during the previous 140 years, the community will be disrupted. The Minister of Justice has claimed: ``Don't worry about the Waitangi Tribunal. It can't make a recommendation that affects privately owned land; it affects only publicly owned land.' ' I put it to the Minister that the tribunal can affect the reserves, the roadways, the railways, the riparian strips, and the forests.

The Minister tried to say that it does not affect private land. Mr Stephen O'Regan, popularly known today as Tipene O'Regan, was asked

on television on 18 July: ``Are you ever going to seize private property?'' Mr O'Regan replied: ``We have not.'' The presenter asked: ``Will you ever?'' Mr O'Regan replied: ``It might be that at some point [if we] find that negotiations with the Crown over the Crown resource cannot be settled we will have to then go back to the underlying issues that historically underline private interests.'' The presenter asked: ``Does that mean yes, you may seek private property?'' Mr O'Regan replied: ``If we're forced to.'' That is the division the Government is putting between the people of New Zealand.

Hon. K. T. Wetere: Rubbish!

Hon. V. S. YOUNG: I tell the Minister that the people are fearful of the Government and the tribunal as the tribunal sits for year after year, decade after decade, trying to resolve matters that the Minister knows are irreconcilable.

Debate interrupted.

The House adjourned at 10.30 p.m.

## **6 Dec 1988, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 494, pp8525-8536**

### **Treaty of Waitangi Amendment Bill (Second Reading cont.)**

#### TREATY OF WAITANGI AMENDMENT BILL

##### Second Reading

Debate resumed from 22 November.

Hon. V. S. YOUNG (Waitotara): When I spoke earlier on the Bill I said that I was opposed to most of the proposed extensions. I am opposed to the extension of the terms of reference of the Waitangi Tribunal to allow its consideration to be retrospective for 140 years in the history of New Zealand. The Government has let Pandora out of the box; it has created false expectations. It has divided New Zealand, yet at the same time it has not faced up to the real issues that confront the Maori people---economic advancement, education, and opportunity.

The Bill, like the previous amendment to Waitangi Tribunal legislation, is a backward step. However, I welcome one aspect of the Bill: that at last the Government has taken out of the legislation the ethnic requirement in relation to members of the tribunal. The Act stated that four out of the six members had to be Maori. I am sure that New Zealand has gone past the stage at which ethnic origin must be specified. How does one determine a Maori today? Why should the legislation state that four out of six members must be Maori? The tribunal can comprise up to 16 members. The ethnic origin of those members is not spelt out in the Bill, and I welcome that.

However, the legislation does state that, when a tribunal is considering matters relating to the disposal of, or claims on, State-owned enterprise land, and it can make a decision against which there is no appeal, one of its members shall be Maori. The Opposition would expect a considerable number of the tribunal members to be Maori. However, why should that provision be included in the Bill when it has been taken out elsewhere? Why should that ethnic requirement be specified? Once again, a needless division has resulted from the legislation. I found the ethnic requirements contained in previous legislation to be offensive. The Waitangi Tribunal has been a useful body for advising Governments on matters relating to current jurisdiction---or, indeed, legislation---or the administration of Government departments. I believe that that is a proper and continuing role for the tribunal. However, to have every dispute regurgitated and placed before the tribunal, whether or not it has been dealt with before, makes a farce of the issue.

When I spoke previously I reminded the House of the Ngai Tahu

claim that is before the tribunal. One of the reasons the tribunal is being expanded is that so much time has been set aside to consider the Ngai Tahu claim for injustices that took place in the Kemp purchase of the middle part of the South Island more than 100 years ago. In 1944 the House passed legislation relating to the Ngai Tahu claim settlement. When I spoke previously I read the preamble to that legislation: ``In settlement of all claims and demands which have heretofore been made on His Majesty's Government in New Zealand and for the purposes of releasing and discharging His Majesty's said Government from any claims or demands which might hereafter be made on it in respect of, or arising out of, the purchase of certain lands in the South Island belonging to the Ngaitahu tribe, the purchase aforesaid being referred to under the heading of South Island Claims, Kemp Purchase in the report of a Native Land Claims Commission contained in Paper G5 of the Appendices to the Journals of the House of Representatives for session one of the year nineteen hundred and twenty-one.''

The matter was investigated 60 years ago, and 40 years ago it was resolved to the satisfaction of the House and the settlement was welcomed by the South Island Ngai Tahu people, whose representative was acclaimed for the compensation that was obtained at that time. However, that claim, like the Taranaki confiscated lands claim, is before the tribunal again, although there is no reference to the previous resolution of those disputes.

The tribunal sits and divides the nation needlessly, and the retrospective element of its deliberations and responsibilities must go. New Zealand has plenty of challenges ahead of it---in Parliament and throughout the country---in relation to improving the lot of the Maori people and improving their opportunities and education. Indeed, those improvements were the objectives of the compensation paid to trust boards that were set up at that time. The trusts have done reasonably well with the funds they had, but they have not been able to do enough. Those matters should be attacked, and we should be able to provide jobs. Digging up the past to try to find a solution is not an answer. In our heart of hearts we know that the solution is not in the past; it is elsewhere.

Clause 8 of the Bill contains the proposed new subclause 8(2) of the second schedule, which enables the tribunal or the presiding officer of the tribunal to call for documents and to subpoena witnesses to appear before the tribunal. If those rights are being accorded the chairman of the tribunal then the opportunity for cross-examination must be given if the tribunal is to have the powers of a court or a commission of inquiry. How can there be a demand that evidence be placed before the tribunal, and how can witnesses be called by the tribunal, if people with other points of view do not have the opportunity to cross-examine?

I should think that the Government would want to be able to turn back the clock on the legislation in relation to the Waitangi Tribunal. The Minister of Justice has belatedly recognised the growing fear that the tribunal's inquiries will not be limited to Crown land, although that is practical. The tribunal will conduct inquiries into the origin of the title of privately owned land. Once again, the Government has generated an unnecessary fear that the security of a title that is guaranteed in law is not as secure as it was. The Government should examine the comments made by those tens of thousands of New Zealanders who are leaving New Zealand shores permanently. One of the reasons they are leaving is that they are uneasy about the future. The legislation is contributing to that unease, and large parts of it must go.

Rt. Hon. Sir ROBERT MULDOON (Tamaki): I paused to give a Government member the opportunity to speak on the legislation, or

even to show some interest in it. The House did hear a murmur from one Government back-bencher a moment or two ago---a member of the ``Ngati Amsterdam'', but I do not see any interest being taken in the Bill by any of our Maori colleagues on the other side of the House. They are content to let the Bill go through in the usual way the Government is passing legislation---under urgency at a time when the House should not be sitting---and take not the slightest interest in it. I notice that the member for Yaldhurst, the Senior Government Whip, has decided to take a moment's interest in the proceedings of the House. I suggest that she look around---at the bench behind her, the bench in front of her, and either side of the bench on which she sits.

A Government Member: What's this got to do with the Bill?

Rt. Hon. Sir ROBERT MULDOON: What it has to do with the Bill is that the whole of the Labour Government Cabinet is totally uninterested in the Bill. It is a disgrace that one of the most important of legislative measures on the statute book at present---and I do not use that term lightly---is being hacked about. It is not being improved, but is being hacked about, and there is a total lack of interest in it by members of the Cabinet of the Government of New Zealand.

The legislation certainly needed to be amended---there is no question about that---but the amendments contained in the Bill are not the amendments that were needed to prevent the mischief that is being done to race relations by the Treaty of Waitangi Act. For as far back as I can go in this century nothing has done more damage to New Zealand race relations than the Treaty of Waitangi Act has done in the 4 years since it was amended by the Government. The Act was a promise, and it was passed at the end of the third Labour Government. As you will remember, Mr Acting Speaker, that Government hurriedly passed much legislation that related to promises in that last year before the 1975 election. The Government of the time felt that it would have difficulty in winning the 1975 election, so it decided it had better carry out some promises. When the legislation that is now the Treaty of Waitangi Act was discussed the Minister of Maori Affairs of that time, the Hon. Matiu Rata, wanted its terms of reference to go back to the time of the treaty. Wisely, he was overruled. The terms of reference commenced from the enactment of the Act, and we were able to live with that. In the time of my Government worthwhile advice was received from the tribunal, and at least one rather difficult issue was dealt with effectively through the co-operation of the Government with the tribunal. But when, as with so many other things, the present Government foolishly amended the terms of reference and took the limit back to 1840 it put on the statute book a formula for racial disharmony such as New Zealand has not had since the previous century when there was conflict between Maori and pakeha.

That is the amendment that should be in this amending Bill. To regurgitate those ancient grievances in the manner that the tribunal is doing---and, as my colleague who preceded me reminded the House, potentially to overturn statutes that are on the statute book by the agreement of the House that dealt with those grievances---is an act of total folly. For the first time in many, many years race relations have become a burning issue all around the country, and that is a result of the legislation. People who normally take no interest in politics are saying such things as: ``These bloody Maoris; they're never satisfied.'' We are hearing that kind of language throughout the country. Overwhelmingly, Maori who talk to me about the matter say: ``Rob, I didn't ask for it; I don't want it; I don't expect to get anything out of it; and it's causing conflict between me and my pakeha mates.'' That is what the Treaty of Waitangi Act is doing.

At the very least this amending Bill should have taken the terms of reference back to the 1975 position. New Zealanders can live with subsequent grievances, and can live with the problem of the outfall of Motunui and the shellfish beds---which, of course, local Maori had been polluting for many years with the outfall of the freezing-works at Waitara where most of them worked. Never mind, New Zealanders can live with that. That problem was solved satisfactorily; although it was reasonably expensive, it was a modern problem. However, New Zealand cannot live with the regurgitation of ancient grievances.

One specific grievance in my own electorate involves the Ngati Whatua of Orakei. Many members still in the House unanimously passed a Bill into law in 1978 that had the approval of the Ngati Whatua and the Government. I know of no one in the country who uttered a word against it. It was passed in harmony. So the issue went to the Waitangi Tribunal, which came back with another recommendation that the present Government rubber-stamped. What happened next? Another member of the Ngati Whatua made a claim, not for a little land at Orakei that is costing the taxpayers \$3 million in addition to various other things, but for the whole of Auckland City as well as the land on either coast right up as far as the Kaipara Harbour.

That is the can of worms that has arisen from the foolish legislation of the present Government, and that is the kind of action that is causing racial disharmony. I repeat that people in the sporting clubs and the pubs are saying: ``Are you bloody Maoris never satisfied?''; and Maori people are saying: ``I didn't ask for it; I don't want it; and I don't expect to get anything out of it.'' The legislation is making not just the pakeha unhappy and angry, but also thousands and thousands of good Maori New Zealanders. Basically, the leaders are the radicals, and the dissidents; those who have changed their pakeha names to fake Maori forms of them, and who are having the time of their lives with the acquiescence of the Labour Government.

I wonder why Maori Government members have not said to their Cabinet colleagues: ``This is causing racial disharmony that is damaging Maori people.'' The problem is going right down through society. Some of the young Maori are picking it up and running with it without really understanding it, but other young Maori are reaping the damage that is caused when a pakeha parent talks about the matter and the pakeha child goes to school, has a crack at his Maori mates, and says: ``What are you bloody Maoris up to?'' That is what is happening. It is wrong and it is bad. At the very latest, Mr Acting Speaker, 2 years from now a National Government will change the Act.

The Bill leaves out, of course, any kind of provision for other ethnic minorities. I hope the Minister of Police will listen to what I am saying. I may have the Minister wrong, but I believe he is well aware of some aspects of what I have been saying. The Bill does not provide for other ethnic minorities, nor should it do so. However, in our society we have to create statutes that will enable all ethnic minorities to live as New Zealanders with the pakeha majority. Whether they are Maori, whether they come from one or other of the Pacific Island nations, whether they come from Europe, or whether they are new British migrants---

Jack Elder: Did the member for New Plymouth hear that?

Rt. Hon. Sir ROBERT MULDOON: Oh yes, and the Dutch.

Bill Dillon: And the Irish.

Rt. Hon. Sir ROBERT MULDOON: My word, the Irish in New Zealand are about the most peaceful Irish people in the whole world. That is my belief. They have taken on the mantle and the mana of New Zealanders. The Irish do not hit a head every time they see it, they hit it only every second time. They give people one chance. However, we must all have pride in our ethnic origin and in the culture of the folk from

whom we came. I consider that, because I am New Zealand born, I inherited the Maori culture as part of my New Zealand inheritance. I take pride in the Maori culture, and that is why I do not want the split created by the statute to go any further. It can be amended, but the Bill does not contain anything that does that. It does change the method of composition of the tribunal, and it enables it to deal more rapidly with the huge number of claims before it. However, the Government still finally appoints the members, and it will still finally ensure that the tribunal has a massive Maori majority. However, the Bill does not stop the tribunal from recommending that solutions to ancient grievances included in statutes passed in Parliament be overturned.

The Bill does not provide even for the normal processes of a court---that is, that evidence can be challenged and that cross-examination can take place. In the Ngati Whatua Orakei hearing, a public servant who had been deeply involved in the 1977-78 negotiations considered that he should attend and give evidence to the Waitangi Tribunal---evidence that would have been compelling. However, his departmental head---doubtless after consultation with his Minister---said that the department did not have time for that kind of thing. To his disgust he was refused permission to go along and put in as evidence material that would have suggested to the tribunal that it was unwise to reopen an issue that had been dealt with unanimously by Parliament. That is not fair dealing and fair treatment by the Government.

The Government is crazy and ill-advised, and is leaning over backwards to give something extra to Maori. Maori are capable of standing on their own feet. The National Government introduced the tu tangata programme: ``Stand tall. You are a man. You are a New Zealander. You are equal to everyone, and you are not to receive special treatment from the Government so that it will continue to get the Maori vote.''

Margaret Austin: Can't women stand tall?

Jack Elder: He's been cut off at the knees.

Rt. Hon. Sir ROBERT MULDOON: I can do without such stupid interjections.

The ACTING SPEAKER (Mr T. J. Young): Order! The member has asked to be heard in silence without interjections, and he will have that right accorded to him.

Rt. Hon. Sir ROBERT MULDOON: I do not mind, Mr Acting Speaker, because I did not ask to be heard in silence. I am just saying that if the members who are making the inane interjections had the courage of their convictions they would stand up and try to give some answers to what I am saying. But they will not, because they dare not. I shall come back to the issue. The Bill at the very least should have repaired the defects in the proceedings of the tribunal. It does not do that. At the very least, it should have allowed for fairer representation. The tribunal is unbalanced. One tribunal member who did not sit on the Ngati Whatua case, but who was deeply involved in the 1977-78 negotiations and decision, was asked why the tribunal had overturned a decision that he knew was fair, just, and acceptable to both sides. His answer was, ``When someone offers you some money, you don't say no.''

It is a sad day for Maoridom when one of the more respected leaders makes such a statement. That is what the tribunal is all about. If those people who can barely trace their whakapapa back to those times, and who are a mixture of---as someone opposite said---Irish and half of the nations on God's earth, are offered some money, they will not only not say no, but they will ask for more. That is not the way to preserve racial harmony in New Zealand. It is a recipe for racial disharmony, and should never have been there. If the Government does not come to its senses in the next 2 years, the

next Government---the National Government---will make the amendments to the Act that should be in this Bill.

Hon. PETER TAPSELL (Minister of Police): I did not intend to take part in the debate, but I return the compliment of the member for Tamaki, who has seen fit to comment on the Bill. I shall reply to some of his comments. The Bill is very simple and straightforward. It provides for the Waitangi Tribunal to carry out its functions more quickly and efficiently. I cannot understand why anyone of good will would want to oppose the Bill. It is clear that some people are unreasonably fearful of the Waitangi Tribunal findings. When one examines the findings of the tribunal in relation to the Motunui, Kaituna, Manukau, and Orakei claims, it is hard to believe that there can be any real objection to them. In effect, the tribunal has set the standard for the protection of the environment that other Government and non-Government agencies have since followed. Of course, there are one or two people---I have been told that there is a second---who see fit to inflame the general public in relation to Maori and European problems for their own purposes. I regret that action.

I shall deal with the general principles. It is a matter of record---now an undisputed record---that Maori were subject to injustices in relation to land after the signing of the Treaty of Waitangi. It is not sufficient to say that there are other ethnic minorities with problems. Those injustices applied specifically to Maori, although no one would say more strongly than I that every ethnic minority in New Zealand ought to be treated in the same way. However, these are special anomalies. In 1975 the Labour Government brought the tribunal into existence through the Treaty of Waitangi Act. The tribunal was charged with seeing that there was observance and confirmation of the general principles of the treaty, and any Maori, whether as an individual or as part of a group, could take to that tribunal any grievance. The tribunal was required to examine grievances thoroughly and then make a recommendation to the Government. It is worthy of note that the claim or the grievance was against the Crown, and not against any individual or other citizen. It is also worthy of note that in the 1975 Act the tribunal is charged only with the power to make a recommendation. The ultimate decision is made by the Government, as it is now.

In 1986 the Waitangi Tribunal Act was amended, and the Act now covers any grievances alleged to have occurred after 1840. Some further problems were introduced with the introduction of the State-Owned Enterprises Act and the intention of the Crown to dispose of certain Crown lands. After a Court of Appeal decision, the matter was set out in the Treaty of Waitangi (State Enterprises) Act to provide some protection to ensure that the grievances of Maori people that might subsequently be brought before the tribunal under the previous Act were not prejudiced by the Crown's previously disposing of that land.

It is worth noting that in relation to the Treaty of Waitangi (State Enterprises) Act, the tribunal in those few cases has the power to make a decision. It is also worth noting that those provisions apply only to small sections of lands owned by the Crown, and not to most lands owned by the Crown---not even to most Crown land, because several areas are specifically excluded under that Act from consideration by the tribunal. Offhand, I can say that those sections are any land for which there is a prior claim before the tribunal; any land for which the leaseholder has a right to freeholding; or any land subject to deferred payment leases---all of the pastoral leases are excluded. Those areas on which the tribunal has the power to make a decision are a very small section of what is now Crown land---not lands of the Crown, but Crown land. In most

cases the tribunal has the power only to make a recommendation. Moreover, it is to be noted that the Maori people taking a claim have the power only to take a claim against the Crown. Not 1 in. of land owned by an individual landowner, whether Maori or European, is at risk. No right of an individual New Zealand citizen is put at risk in any way by the findings of the Waitangi Tribunal under either provision, because under the second provision the purchaser of the land is made fully aware of the resumption clause before the sale.

I realise, as does the member for Tamaki, that we are in danger of escalating problems and difficulties between Maori and European. God only knows that I have done my best to prevent that, and I believe that the member for Tamaki, during the time he was Prime Minister, also took such a role---and I will say that he is highly regarded by Maori. There is a real danger that we escalate an unreasonable fear among the public in relation to the activities and functions of the Waitangi Tribunal. As I have said, most claims are against the Crown, not against an individual. Moreover, the tribunal has the power to make only a recommendation on those claims. In relation to the few matters covered by the Treaty of Waitangi (State Enterprises) Act the tribunal has the power to make a decision in relation to a very limited area of Crown land. In all of those cases before a person purchases the land he or she is made fully aware of the possibility of a resumption. I hope that I have laid that matter to rest.

I shall comment briefly on the provisions of the Bill. The Bill increases the number of persons who will serve on the tribunal from 7 to 16. That increase has been made necessary because of the large number of claims---some by individual Maori and some by groups of Maori---brought to the tribunal. It is in everyone's interest, and most of all the interests of Maori, that the claims be duly heard and settled as quickly as possible. My hope is that they will all be behind us by the year 2000. The Bill provides for the appointment of a deputy chairperson. In the past the weight on the shoulders of the chairman has been too heavy. There will now be a deputy chairperson who is to be a judge of the Maori Land Court.

The Bill contains provisions for the tribunal to sit in sections. That will allow as many as three separate sections of the Waitangi Tribunal to hold hearings around the country. It is clear that each section will have regard to the general principles followed by the tribunal as a whole. There may be occasions when an individual section brings down a finding that appears to be at variance with other findings and with the findings of the tribunal as a whole, but that is our experience with the numerous courts throughout New Zealand. There is no way of being certain that a court sitting in Invercargill will find in exactly the same way as one sitting in Whangarei. We must face up to the fact that that matter is a part of our legal system.

The Bill removes the requirement that any number of the tribunal members be either Maori, European, or of any other racial descent. I am pleased about that change. As the member for Tamaki pointed out, the Minister will no doubt ensure that a certain number of the members sitting on the tribunal are Maori. No one would expect anything else. However, it is unreasonable to spread a fear among the European people that, for example, most of the members may be Maori. Maori people have had to appear before the courts of this land for 140 years during which time remarkably few of the judges have been Maori. The other measures in the Bill are machinery measures allowing for salary arrangements, conditions of employment, and the like.

The Bill is a good one. I hope that it will allow the tribunal to carry out its functions more efficiently and quickly to the stage at which I hope all of the claims will be behind us by the year 2000. While members might question the Bill, it is important for them not



to spread fear and misunderstanding unnecessarily amongst the pakeha people of New Zealand. They have no need of that. As I said, in relation to the major claims the tribunal makes only a recommendation. In relation to those very few cases---and they will be few and relate to very small areas of land---for which the tribunal has the power to make a decision, those persons who purchased the land in advance will be made aware of the requirement that the land can be resumed.

PAUL EAST (Rotorua): I listened with great interest to the speech made by the Minister of Police, who was trying to downplay the importance of the Bill and its parent legislation. He was trying to soft-pedal on the whole issue of race relations and the Treaty of Waitangi. The principles involved have been with us since the treaty was signed. The treaty was not part of the domestic law of New Zealand, and the Waitangi Tribunal, established in 1975, is not a court but a recommendatory body, just as the many other quangos that the Government has set up are. Major changes have been made to those two fundamental principles. The Treaty of Waitangi is being incorporated more and more into the domestic law of New Zealand and one has to ask whether that should be done. The Waitangi Tribunal, a Government-appointed political body, is being asked to act as a court of law. I say that that is wrong.

The fact that the tribunal is a politically appointed body was well illustrated when Paul Temm, a senior, prominent, and eminent Queen's Counsel, was fired from it within months of the Government's taking office and the Government appointed its own political appointees. Now the Government wants to say that even though the tribunal is stacked with its political appointees it wants the tribunal to be treated as a court. What kind of system of justice would New Zealand have if the Government expected a tribunal to be treated as a court when the tribunal is stacked full of the Government's own political appointees? The Government showed its respect for the tribunal when it fired two members---Sir Graham Latimer, Chairman of the New Zealand Maori Council, and Paul Temm, QC of Auckland---and replaced them with purely political appointees.

The Government should be running scared on this issue, and on the issue of race relations, because it is the author of the problems that New Zealand is facing. The moves the Government has taken have built up expectations amongst Maori to a level that will make it impossible for any Government to deliver. The Government went as far as introducing a Bill of Rights that would have regarded the Treaty of Waitangi as supreme law. That Bill of Rights would have allowed other legislation to be struck down if it conflicted with the Treaty of Waitangi. Fortunately, because of the enormous public opposition to that move, the Government has, at this stage, realised the error of its ways and pulled back from that precipitate action. However, I have no confidence that within the next year or two the Government will not try to do something like that again. It is trying to introduce a Bill of Rights by stealth on the basis that it will not be supreme law but could be elevated to supreme law at a later stage.

What kind of justice system would New Zealand have if every solemn Act of Parliament could be flung out because it conflicted with the principles of the Treaty of Waitangi? It is not known how many volumes of law Parliament has passed since New Zealand has had the Westminster system of government. It is not known how many laws would be affected by such a move, yet the country and Parliament are being asked to fly into the dark without any understanding or appreciation of what is being done. Maori expectations have been built up to a level that no Government could possibly deliver on. That is why race relations are the No. 1 issue in New Zealand. That is why tens of thousands of New Zealanders are leaving New Zealand to make new homes

for themselves and their families in Australia. I think that is sad. I think that those people are mistaken, but that the moves have occurred because of the manner in which the Government has handled the Maori issues.

Judy Keall: The member's encouraging it.

PAUL EAST: It is the job of an Opposition to point out what the Government is doing wrongly, and the Opposition will continue to do that, whether Government members like it or not. I know that Government members do not like seeing New Zealand citizens being interviewed on Australian television and saying that they had left New Zealand during the past 2 or 3 years because of the race relations issue.

Judy Keall: Speak to the Bill.

PAUL EAST: It is a fact. Despite the bleating from the member for Glenfield and the member for Horowhenua, it is a fact that those people have left. Parliament has to face that fact even if it is unpalatable. Members cannot run away from the fact that New Zealanders do not like living here any longer and have fled to another country. We as parliamentarians---and Government members in particular---should stop, take stock, and ask what it is that is encouraging some better qualified, skilled, capable, middle-class New Zealanders to buy an air ticket and make a new home for themselves and their families in another country. We know why it is---time after time those people appear on television, speak on the radio, and are reported in the newspapers as saying that race relations were the deciding factor.

Judy Keall: What has that to do with the Bill?

PAUL EAST: It has everything to do with the Waitangi Tribunal, and if the member does not know that I feel sorry for her. No member of Parliament would deny that the Government has a responsibility to assist those people who are failing in education and who are not getting a fair share of the health system. That assistance should be given regardless of the racial origin of the person concerned. No member of Parliament would say that educational assistance should not be given to Maori people, because it is obvious that those people are not obtaining the resources they need to succeed. The failure statistics are appalling and we as members of Parliament say that those people should be given assistance.

Maori people are disproportionately represented in the health statistics. They do not live as long as pakeha, they suffer from many more serious illnesses, and they spend more time in hospital. A sensible Government and a sensible Parliament have to respond by doing something about the matter to enable better health care to be delivered to those people. Those problems cannot be solved by saying that all the land grievances will be settled. That assurance means nothing to the unemployed person in Minginui who is struggling to find a job, or to the family living in a shack with a dirt floor in Ruatoria, and with three or four children with asthma, glue ear, and other problems that should be treated. That assurance means nothing to those people. They want proper assistance from the Government.

Judy Keall: They'll speak for themselves.

PAUL EAST: The Government is doing precious little to speak up for those people. Many Maori people in my electorate are very unhappy about the manner in which the Government has dealt with Treaty of Waitangi and race relations issues. Those people are tired of being criticised by their own friends for appearing to be avaricious and greedy when they do not want a bar of what the Government is doing. They are saying: ``Count us out; that's not us. It's the Government that is taking the action.'' Who would have thought that tribunals would be set up to divide the assets of New Zealand on the grounds of race? The House should think long and hard before it passes such

amendments to legislation as those contained in the Bill, because each time it does so it reaps the reward of exacerbated race relations. In 1975 sound and sensible legislation was put in place.

Dr Gregory: Huh!

PAUL EAST: It was the Labour Government that put it in place. Government members can chuckle away amongst themselves, but the legislation had the support of many New Zealanders. Most people believe that in many instances the Maori people received an unfair deal when New Zealand was colonised. The Opposition does not run away from that fact; but it acknowledges that the Maori people have also received the kind of assistance that I doubt any other indigenous race has received after European colonisation. [Interruption.] I ask the member for Northern Maori, who is interjecting, to name one indigenous race that received better treatment when the Europeans came and colonised a country.

Dr Gregory: What about the Canadians?

PAUL EAST: New Zealand has tried hard in the past 150 years to make sure that the Maori people have received the assistance they deserve. In fact, the Maori people have been given special representation in Parliament, with four seats preserved for them. As well as that, the Department of Maori Affairs has delivered special assistance to the Maori people for the past 50 or 60 years. Nobody would quibble with the need for assistance in matters such as education. Nobody quibbled in 1975 when the Waitangi Tribunal was set up to make recommendations to the Government about the decisions the Government might make that affect the Maori people. What has happened since then is that, as my colleague the member for Waitotara said, the Government has opened a Pandora's box by saying that the Waitangi Tribunal may consider all claims that date back to the signing of the treaty in 1840.

At the end of the day those claims that date back in history require decisions that have to be made by the Government. They are not decisions that should be made by politically appointed tribunals. They are not decisions that should be made by the courts. The tough decisions on race relations and Maori rights should be made by Government, not by the courts. That is a fundamental difference between the Opposition and the Government. A National Government would front up and make the tough decisions on those issues. It would not push them to the side and say that the tribunal or the courts can make them.

I have never believed that this country would have a tribunal, a Government-appointed body, with the power to make final decisions on assets owned by the taxpayers. The Minister of Police said that not only Crown land is involved. I remind him that \$7 billion worth of Electricity Corporation assets, \$7 billion or \$8 billion worth of Forestry Corporation assets, and all the assets of the Coal Corporation may be involved. What is wrong about that is that not only is enormous jurisdiction being given to a politically appointed tribunal but there is no right of appeal. I ask Government members to name another country that has the British system of justice in which such decisions can be made by a politically appointed tribunal with no right of appeal. I am sure they will not be able to produce one such example.

The people would be extremely concerned and distressed in a year or two if the tribunal should decide that the dams on the Waikato River no longer belong to the Electricity Corporation but to the adjacent tribes. The tribunal will have that power, and there is nothing that New Zealanders can do to appeal such decisions. It is madness for the Government to hand over such authority to a tribunal. It is all very well for the Minister of Police to say that it is the result of a Court of Appeal decision. He is trying to blame the

courts. At the end of the day the Government makes the law. The Government could say: ``The Court of Appeal has handed the matter back to us and we will make the decision. But we will not cave in and hand over the issue to the Waitangi Tribunal. We will pass law in Parliament to ensure that the assets owned by the taxpayers will continue to be owned by them. We will not take the line that we will hand over everything to a politically appointed tribunal and provide no right of appeal from that tribunal.''

A right of appeal from such a decision must be one of the foundation-stones of the British system of justice. Equally, one of the corner-stones of New Zealand's system of justice is the ability of people affected by such decisions to be able to appear before such a tribunal---they do not have the right to do that before the Waitangi Tribunal---and to have the right to test the case with cross-examination. Members of the Chamber---including the Minister of Revenue---who have lengthy experience in the courts will know that the truth is arrived at when evidence is subjected to cross-examination. No court in New Zealand would consider reaching a decision on evidence that was not subjected to cross-examination.

The Government is prepared to set up a tribunal with binding decisions over billions of dollars of State assets, yet the people who may be affected have no right of appearance before it. They will not be allowed to appear and cross-examine on evidence that could very well result in decisions that affect them, and they have no right of appeal. Government members wonder why everyone has cut and run to Australia. The people have done that because they have realised that race relations are, unfortunately, the No. 1 political issue in New Zealand. Opposition members cannot be blamed. We have not made race relations the No. 1 issue. We have not changed the law in this way. We are not responsible for the widespread antagonism and ill feeling in the community.

Race relations were not the No. 1 issue in 1984 when the National Government lost office. In fact, the issue of race relations hardly arose in any public opinion polls at that time. Now, month after month, that issue continues to be of No. 1 concern to the public. However, the Government, by some curious reasoning, is saying that it is all the Opposition's fault. The Government has changed the law; it must take the responsibility. Unfortunately, it will be a long time before the problems can be resolved. I do not blame the people who have taken cases. There are 166 claims before the tribunal at present, and I congratulate Sir Graham Latimer, Matiu Rata, and others who have brought claims before the tribunal, because they are trustees for their people. If the law provides an opportunity for them to obtain some assets for their people as trustees for their people they are obliged to take that opportunity. One cannot blame the participants in those actions for what they are doing. They are doing what they are duty-bound to do---to proceed with just claims that they consider should be brought on behalf of their people. As trustees for their people they have that responsibility and they must fulfil it.

The blame must lie on the Government's shoulders because it is the Government that has changed the law, and it is the Government that has built up the expectations of Maori to such a level that they will not be able to be satisfied. The problems will not be solved in a month or a year. Since 1975 the tribunal has been able to deal with an average of one claim a year. At the moment 166 claims await hearing. Even if the tribunal can sit in three divisions it will still be 50 years before the claims can be dealt with. I say to the Government that it is time for resolute action.

We cannot continue to have race relations as the No. 1 issue, and more and more capable and competent New Zealanders going to the

international airports, boarding 747s, and flying to Australia to make new lives for themselves and their families. It is time the Government returned to the principle with which I started my speech---that the Treaty of Waitangi is not part of New Zealand's domestic law. It should not be part of New Zealand's domestic law. Certainly, it should be a guiding force for the Government, but it should not be part of the domestic law. The tribunal should not be seen as a court.

Mr McTIGUE (Timaru): This Bill invokes a principle that brings about deep divisions in our society.

Hon. Jonathan Hunt: I raise a point of order, Mr Speaker. The Senior Government Whip was told by the Senior Opposition Whip that the previous speaker would be the last speaker in the debate. The Government accepted the word of the Senior Opposition Whip.

Trevor Mallard: They've cut out Government speakers.

Hon. Jonathan Hunt: It was accepted in good faith. [Interruption.]

Mr SPEAKER: Order! This is not a matter for exchange across the House. It is a matter for discussion elsewhere.

Paul East: I raise a point of order, Mr Speaker. During the course of that discussion the member for Hamilton West, who is the Junior Government Whip, said that the Opposition had cut out Government speakers. I have checked with my colleagues and if there are Government speakers who wish to speak on the legislation we will certainly be prepared to accommodate them. [Interruption.] The member for Hamilton West interjected that the Opposition was cutting out Government speakers.

Trevor Mallard: He's left the House now. It was on the word of the Senior Opposition Whip.

Paul East: Points of order should be heard in silence.

Mr SPEAKER: Order! This matter should be settled through private discussion, not in the House.

Mr McTIGUE: As did the member for Tamaki, I hesitated to rise in order to give Government members the opportunity of seeking a call. The point was made this morning that the issue of race relations is one of the injuries that is being done to society, and that the division in society should be healed as quickly as possible rather than the healing being delayed. The issues before the Waitangi Tribunal are causing much of the discord. As did many other New Zealanders, I believed that the Treaty of Waitangi brought two peoples together, making one nation. The manner in which the Government has allowed the disputes to be reopened time after time is a matter of discord amongst the people, rather than a matter of healing.

Several Government members, including the member for Glenfield, have interjected this morning that the Opposition is not interested in justice. The Opposition is speaking strongly on the legislation because it is interested in justice and it wants to ensure that justice is done to all people in New Zealand. If New Zealand has a tribunal that will make decisions for New Zealanders, everybody should have the opportunity of being heard before that tribunal. In particular, they should have the opportunity to challenge evidence put before it. It is through the ability to challenge that evidence that there will be justice. Unless Parliament does something about healing the rifts between our peoples New Zealand will develop into a Lebanon or a Northern Ireland, and I do not think any New Zealanders want that to happen.

As the member for Rotorua has indicated, the Government must act strongly and resolutely so that that does not happen. As he pointed out, if at some stage in the near future most of the resources of this nation pass to the Maori people on the basis of some form of separate development we will have prevented for all time the healing

process that is so necessary. Decisions will be made about energy-generation resources and the fishing resource. A figure of 50 percent of the fishing resource has already been indicated by the Government far in advance of the decision of the tribunal. Such action cannot and will not be tolerated by most New Zealanders.

If the Bill brought about some harmony and resolution of the disputes that exist, and that should be resolved, I would be happy that it should be passed, but from what I see of the legislation I believe that it will be the basis for further disputes and arguments in the future, because it will not be seen to have been just to all peoples. It will not be seen to have resolved clearly and justly between the people of New Zealand the issues that are in dispute. It will not be seen to have given fairly and freely to all people an opportunity to be heard by the tribunal before the recommendations are made to the Government.

Where is the justice when one group can be a party to the tribunal that will make the recommendations and the Government, arrogantly, without consulting any other sources, is able to draw on its wisdom to decide the position of the rest of the people? If that is the basis for decision-making, and the basis for making such powerful recommendations to the Government, people will never be satisfied with the decisions that will be made. As does the member for Waitotara, I deplore the repeated resurrection of the Ngai Tahu claim. Twice before it has been fully and finally settled by legislation, but once again it is before the tribunal. Contrary to the areas mentioned by the Minister of Police, it is not a small part of New Zealand that is being claimed.

The claims in the South Island amount to nearly 70 percent of the territory of the island. Those claims are for Crown land. That land is important to all the people of the South Island. The mountainous nature of the land produces many of the resources that are important to the development of land. Much of the resource is being claimed in the name of people who barely populated the area, in many instances. Those resources would become theirs, to command the way they would be developed. That procedure is not acceptable to most New Zealanders.

Dr Gregory: Why are there all those Maori names down there?

Mr McTIGUE: That is because we are sensitive to the culture of some of the people who belong to that land---the tangata whenua. We also have many other names from other nationalities who came to that land---the Irish, the Scots, the English, the Dutch, and so on. That is what we should be trying to establish in the House, rather than a provision that divides us and brings in a degree of separate development. That is deplorable. New Zealanders do not want resources to be allocated on the basis of race. They want them to be allocated in the best interests of all. For that reason one has to deplore the stirring up by the Government of a lot of racial unrest and disharmony in the past 5 years. The Bill will do nothing to repair that damage: it will heighten it.

MARGARET AUSTIN (Yaldhurst): I move, That the question be now put. The House divided on the question, That the question be now put.

Ayes 43

Anderton; Bassett; Braybrooke; Butcher; Clark; Cullen; Davies; de Cleene; Dillon; Duynhoven; Elder; Fraser; Goff; Gregory; Hunt; Jeffries; Keall; Kelly; King; Kirk; Marshall, C.R.; Matthewson; Maxwell, R.K.; Neilson; Northey; Prebble; Robertson; Robinson; Rodger; Scott; Shields; Shirley; Simpson; Sutherland; Sutton, J.R.; Sutton, W.D.; Tapsell; Tirikatene-Sullivan; Wilde; Woollaston; Young, T.J.

Tellers: Austin; Mallard.

Noes 26

Anderson; Angus; Carter; Creech; Gair; Gerard; Graham; Grant; Kidd;

Kyd; Lee; Luxton; McClay; McCully; McKinnon; Marshall, D.W.A.;  
Maxwell, R.F.H.; Meurant; Muldoon; Munro; Richardson; Smith; Storey;  
Young, V.S.

Tellers: Gray; McTigue.

Pairs

For: Douglas; Lange; Moore; Palmer; Tennet; Terris; Wallbank.

Against: Banks; Bolger; Cooper; O'Regan; Shipley; Upton;  
Williamson.

Majority for: 17

Motion agreed to.

The House divided on the question, That this Bill be now read a  
second time.

Ayes 43

Anderton; Bassett; Braybrooke; Butcher; Clark; Cullen; Davies; de  
Cleene; Dillon; Duynhoven; Elder; Fraser; Goff; Gregory; Hunt;  
Jeffries; Keall; Kelly; King; Kirk; Marshall, C.R.; Matthewson;  
Maxwell, R.K.; Neilson; Northey; Prebble; Robertson; Robinson; Rodger;  
Scott; Shields; Shirley; Simpson; Sutherland; Sutton, J.R.;  
Sutton, W.D.; Tapsell; Tirikatene-Sullivan; Wilde; Woollaston;  
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Pairs

For: Douglas; Lange; Moore; Palmer; Tennet; Terris; Wallbank.

Against: Banks; Bolger; Cooper; O'Regan; Shipley; Upton;  
Williamson.

Majority for: 17

Bill read a second time.

### **13 Dec 1988, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 495, pp8861-8872**

#### **Treaty of Waitangi Amendment Bill (Third Reading)**

TREATY OF WAITANGI AMENDMENT BILL

Third Reading

Hon. PETER TAPSELL (Minister of Police): On behalf of the Minister of Maori Affairs, I move, That this Bill be now read a third time. I do not think it would be seen as being unjust if I were to report to you, Mr Speaker, that during the Committee stage it became clear that there was a growing---if begrudging---recognition by some members that the Bill is very simple and straightforward, and does no more than simply provide for the Waitangi Tribunal to carry out its functions better. In particular, the members of the tribunal have been increased from 7 to 16. The ethnic requirement previously in the parent Bill has been removed, although it was pointed out that in appointing the new members the Minister clearly will have regard to ensuring that there is an ethnic and a reasonable gender balance in that committee.

The Bill provides for a deputy chairman who shall be a judge of the Maori Land Court. It provides for the tribunal to hear and to defer cases. It provides for reference to the Maori Appellate Court by the tribunal should it wish to settle matters in relation to

boundaries, and to the Maori Land Court in relation to beneficiaries subject to any particular claim.

During the Committee stage the Government was at some pains to point out some important features about the Treaty of Waitangi and the Waitangi Tribunal. It became clear that those features were one of the matters in which there is a major difference of philosophy between Government members and Opposition members---not only in relation to the history and importance of the treaty but also in relation to the future recognition by this country of the treaty. Members may recall that during the earlier stages of the Bill the National Party conference was held. It was a great sadness to the Maori members on this side of the House to note that among the four Maori who attended the conference three were unable to support their Maori spokesman. The other three disowned their Maori spokesman, who, as I remember pointed out that the treaty somehow settled New Zealand into a time-warp of 1840---that the time had come when the treaty might be best disowned and forgotten about. That matter became very clear during the Committee stage.

The Government for its part remains absolutely committed to the treaty being an important document in New Zealand's history and in New Zealand law. The Government remains totally committed to ensuring that the general principles set out in the treaty will be adhered to, and totally committed to the view that all future legislation brought to the House and passed though it should have regard for the general principles set out in the treaty. That is a basic difference in philosophy between the Government and the Opposition.

It also became clear during the Committee stage that there are still many---even in the House---who are confused about the powers and functions of the Waitangi Tribunal. I forget who the member was, but one member pointed out that in the main that confusion resulted from ignorance. However, it was clear that one or two members---one, anyway---were determined to misrepresent the powers and functions of the Waitangi Tribunal in order to inflame race relations in New Zealand; to pander to what are called the rednecked element in our society; and for his own benefit alone.

For its part the Government has pointed out that there are two separate functions of the Waitangi Tribunal. For those cases taken to the tribunal, as a result of the Treaty of Waitangi Act 1975 and the 1986 Amendment Bill it was made clear, first, that no private land is at risk at any time; and, secondly, that an action brought by Maori people, whether individually or in groups, is an action against the Crown. It was also made very clear that the tribunal has only a recommendatory function---the actual decision is taken subsequently by the Government.

There is also a separate function related to the responsibilities of the Waitangi Tribunal as a result of the passage of the Treaty of Waitangi (State Enterprises) Bill. That Bill had regard for those areas of Crown land to be on-sold to third parties. The intention of that Bill was to ensure that Maori claims, should they subsequently be proved to be just, should not be prejudiced by the on-selling from the Crown to a third party. The function of the tribunal in that case is to have regard for Maori claims for certain areas of Crown land. During the Committee stage it was made very clear that in that respect the tribunal is required to rule on a very limited area of Crown land. It was made clear that the provision does not relate to lands of the Crown but to Crown land---a substantially smaller quantity of land. Moreover, it was made clear that it does not relate to all Crown land---under the Treaty of Waitangi Act certain areas are specifically excluded from consideration by the Waitangi Tribunal. Any land that is already the subject of a claim before the tribunal is excluded. Any land that is subject to section 66 of the



Land Act---and that incorporates all of the pastoral leases---is excluded. Any land that is subject to deferred-payment licence is excluded. Any land for which the lessee has, by virtue of his or her lease, a right to freeholding is excluded. Government members were at pains to point out that, in those small areas over which the Treaty of Waitangi is given the power to decide, that decision will relate to a relatively small area of what is currently Crown land.

I do not remember any substantive objection to the Bill as it passed through the Committee stage. For their part Opposition members were content to point out that they had some concerns about the future of the Treaty of Waitangi; but they have also had real concerns about the treaty's past. As I have pointed out, that area remains one in which the Government and the present Opposition are poles apart. I reiterate that the Government is committed to conserving the Treaty of Waitangi as an important, if not the most important, document in New Zealand's history. The Government is committed to ensuring that the principles generally set out in the treaty are adhered to, and it is totally committed to the view that future legislation that passes through the House shall have regard for the general principles of the treaty.

WARREN KYD (Clevedon): I listened to the Minister of Police with interest. He said that the member for Tauranga had said that the Treaty of Waitangi must not be caught up in the time-warp of history. I do not believe that the Minister can disagree with the member for Tauranga, because much has changed since the treaty was signed. No one would suggest that the parties---the British Crown and the Maori chiefs---are the same now. No one would suggest that the property is the same now as it was then---there are modern buildings, society has changed, the way of life of the Maori, the way of life of the European, and the independence of New Zealand have changed. Of course, those things cannot be caught up in the time-warp of history.

Any suggestion that the treaty should be a document that must be honoured word for word is ridiculous. I do not think that the Minister of Police believes in any way that that is possible; yet he suggested it. It is unrealistic. New Zealanders generally do not believe it and neither do the Maori.

The Minister said that no private land was at risk. The member for Tarawera brought a private member's Bill before the House just to put that matter beyond doubt---to protect private land---and the Government rejected it. I hope that private land is not at risk. We shall soon see. However, the tribunal has the power to make recommendations in connection with private land, and the Government clearly indicates that it will try to implement the recommendations of the Waitangi Tribunal. It may not be just State-owned enterprises over which the tribunal has binding powers, because the tribunal came up with the decision in connection with the Muriwhenua fisheries claim, and the decision was clearly regarded as persuasive by the Government, to the extent that it proposed to pass 50 percent of the fisheries to Maori tribes. The decision may not be binding, but it is very persuasive, indeed, and the Government has honoured what the tribunal has decided in many cases.

The Opposition says that this Treaty of Waitangi legislation has inflamed and exaggerated Maori expectations. The legislation was created to settle claims. It is generating claims that had been forgotten in the murk of history---if they ever existed. It is creating expectations on the part of Maori. It is creating fear on the part of non-Maori, and they are leaving New Zealand in ever-increasing numbers. As the Minister of Revenue said, one of the main reasons is the tribunal and its decisions. People are concerned and worried about it. Today, anything to do with the tribunal is news. It is topical.

The Bill purports to amend the Treaty of Waitangi Act. The chief defect of the Act is the vague terms of reference. The tribunal does not have boundary restrictions. It has no definitive jurisdiction. It can decide whatever it wants to, and it can listen to what it wants to, because the Act states that where a Maori claims he has been prejudicially affected by any act inconsistent with the Treaty of Waitangi he may bring a claim. The tribunal can hear what it wants to and there is nobody in this land who can overturn a decision once it has been made by the tribunal, because all it is doing is listening to a claim when a Maori says he has been prejudicially affected. The words are too vague. The jurisdiction of the tribunal is virtually unlimited.

Education is included, the environment, land, State-owned enterprises---the lot are included. Under the treaty the Maori people were promised the rights and protection of British subjects. The Opposition says that the Act as amended by the Bill takes away many of those rights and restrictions. There is no right of appeal. Although the right of appeal is one of the corner-stones of British justice there is no right of appeal on any decision of the tribunal. The Bill contemplates several tribunals. Those tribunals will have conflicting decisions, they will have different personnel, and they will probably have different philosophies; yet there is no appeal from a maverick decision. There is no redress whatsoever except in very rare circumstances.

It was suggested that the tribunal did not make binding decisions---or very many binding decisions. It has the right to do so, and it will be making many binding decisions. It will be making decisions in connection with the State-owned enterprises. The Electricity Corporation owns all the hydro-electric dams, all the generating gear, many lines and other chattels, and many properties. Nearly all of those assets---including all the dams on the Waikato River---are being claimed by Maori people. Those assets are worth billions, and should they change hands there is the ability to stop power generation in New Zealand. The tribunal has the power to make binding decisions on those assets. It has the power to make binding decisions in relation to the Coal Corporation.

Only today we heard about the Tainui getting upset---and I cannot blame them---because the Coal Corporation is to be sold to private interests. The Tainui have claims before the tribunal and are seeking injunctions, because they know that the tribunal has the power to make binding decisions in connection with the assets of the State-owned enterprises, including the Electricity Corporation; the Coal Corporation; all the Government Property Services Ltd properties---most of the main buildings in many cities; and the Land Corporation, including much farm and forestry land. The tribunal has a wide jurisdiction for making binding decisions. It has made decisions in relation to private land---for example, the Waiheke Island decision, which has not been implemented. There are wide powers; there are defects; there is no right to cross-examine. One of the rights of a British subject is that if evidence is given against an individual before a tribunal or a court that evidence may be tested by cross-examination. That right is absent before the tribunal and is not given by the Treaty of Waitangi Amendment Bill. That is a defect that has not been remedied. There is no time-limit for bringing claims. As there is no sunset clause a claim could be brought 150 years from the present time, the tribe or people having brought a claim 10 years hence. If a claim is rejected there is nothing to stop the bringing of another claim. There is no time-limit within which claims must be dealt with. Claims will be visited to the third and fourth generation, even with three tribunals.

The tribunal has not been given much increased power or muscle.

Even though its numbers have been increased, only one claim a year has been dealt with by the tribunal since it started, and the cost of dealing with each claim is enormous. Nothing has been done to remedy that delay, and the people are paying for it. Clearly, the position is ridiculous, yet we go on accepting the tribunal even though it does not get through its work and it leaves a huge backlog. The Maori Appellate Court will be severely depleted by the setting up of the tribunal. Many of its judges will be engaged in tribunal work. It will often decide matters referred to it by the tribunal, yet no increased muscle---something that appears to be necessary---has been given to that court. The Maori Appellate Court will decide matters that have been referred to the tribunal, and it seems to be anomalous if the tribunal is to decide claims.

The Opposition welcomes the fact that the Maori majority is to be taken away from the tribunal, because it believes that there should be equality. The problem started when the Labour Government created the Maori majority in 1986. Clearly, Government members are at sixes and sevens on that policy. First, they created a tribunal without a Maori majority; they took it away, and got rid of possibly the most able judge on the tribunal; and now it is put back. Those actions typify the kind of chaos that is taking place with the proliferation of claims, the fear and worry being caused to Europeans, and the frustration that is being felt by Maori. Indeed, there is evidence that Maori will bypass the tribunal and go to the ordinary courts in their admiralty jurisdiction under aboriginal and customary law. The tribunal has not been dealt with in the way it should have been, and many defects remain that should be dealt with forthwith.

Dr GREGORY (Northern Maori): I never despair of the member for Clevedon and the pronouncements that he makes in the House in relation to matters Maori. I hope that, with perseverance, a glimmer of dawn will permeate this thinking. I refer to a comment made almost famous by the member for Tauranga---that the Treaty of Waitangi is regarded as a time-warp in history. I bring to the House a thought that may have been overlooked in the use of that term: does justice know a time-warp of history? If one considers it carefully in that light one concludes that justice is still justice, whatever the position in the time-frame. If one had sought justice in 1840 that justice would apply equally to that being sought today.

Hon. V. S. Young: How many times does one have to extract it?

Dr GREGORY: I am sure that the member for Waitotara would accept that. Perhaps, for the legal brains in this important establishment, I should express the rider to that particular term---namely, the time-warp. The Waitangi Tribunal has built up its own mana, despite the criticism of the Opposition about the composition of the tribunal in the 1985 amendment, in which the matter of four of the seven members being of Maori extraction seems not to have stood the test of impartiality that has been shown in the decisions made by the Waitangi Tribunal during that period of its history. I go further and say that it has been said again that the Waitangi Tribunal lacks teeth---that has been said by many Maori and non-Maori outside this establishment, and also within the confines of this important institution. It has been said further that perhaps, with one particular exception---that relating to Crown land that may very well come under the jurisdiction of a State-owned enterprise---a caveat has been placed on those particular lands, and a decision of the Waitangi Tribunal has been made binding on the Crown. An enormous power has been given to the Waitangi Tribunal, but, none the less, it was a power that arose from considerable debate, and from reference to the meaning of the treaty and the partnership that has arisen out of a Court of Appeal decision in relation to several important matters.

Hon. V. S. Young: It was a deal between the Minister of Justice and the Maori Council.

Dr GREGORY: I do not deny that, but the decision made at that time has certainly tested many minds within the legal fraternity; it has also tested the minds of those with a kind of racial warp in their thinking on matters that relate to people of a racial origin other than their own.

[The question having been raised by the member for Clevedon and the bell having been rung, Mr Deputy Speaker declared that a quorum was present.]

Dr GREGORY: Land that could come under the jurisdiction of a State-owned enterprise could be the subject of a future challenge by Maori participants. In those circumstances a decision of the Waitangi Tribunal would have binding power. The lack of teeth that has been referred to by many I do not see as such. Any attempt to gather information and facts---and that is largely the work of the tribunal---will be beneficial for the nation at present and in the future. The tribunal will gather important information, and will no doubt help to resolve issues relating to land and other matters that may be seen to be in contravention of the Treaty of Waitangi. For that reason alone I believe that the tribunal is an important body. It will be an information-gathering body with recommendatory powers to the Government, and in some specific cases it will have decision-making powers that could be binding on the Crown.

I refer to the proposed new section 6A in clause 4 relating to the Maori Appellate Court. Clause 4 has some important parameters. The proposed new section states that the tribunal may refer a case to the Maori Appellate Court or Maori Land Court: ``Where a question of fact,---(a) Concerning Maori custom or usage; and (b) Relating to the rights of ownership by Maori of any particular land or fisheries according to customary law principles of `take' and occupation or use;'' I shall dwell on the word ``take'' briefly, because it is obviously a Maori word---

An Hon. Member: Go on!

Dr GREGORY: Well, it is different from the word ``take'' in English pronunciation, which some people might think it is, and which it sounds like when emanating from the mouths of some Opposition members. The word ``take'' has a very important meaning. Further information on the word was sought to obtain clarity, and I want to draw the attention of the House to that matter. In Maori customary law ``take'' relates to the foundation, basis, or root of a claim to title to ownership of land---that is, of land that is papatipu, or Maori customary land.

There are four rights: take to papatipu land---namely, a right to papatipu land by discovery, which is an interesting aspect when one considers who discovered the South Island, and some of the claims that have been made by people who came to those lands after the Maori; the second is a right to papatipu land by ancestry, which is known as take tupuna; the third is the right to papatipu land by conquest, or take raupatu; and the fourth, of course, is a right to papatipu land by gift, and known commonly as take tuku. Those are interesting terms. I hope the House will become familiar with them, and that when members hear the word ``take'' they will know what it means. Certainly those words are being used in Maori circles, and I hope they will become increasingly used within the legal framework of this nation. That aspect of the Bill is new.

The most important part of the Bill---and it seems that none of us has so far addressed it---is the size of the tribunal, its membership, and, of course, the method of selection. I did not hear anyone refer to the increase in membership from 7 to 17. The 17 members include the chairman, who will be the Chief Judge of the

Maori Land Court. As a result, in part, of the several cases that have come before the tribunal, and the number of cases that have been processed by the tribunal in the years since its existence---and, of course, to some extent from the proceedings that developed through the Court of Appeal---it was discovered that there was a dire need to process the cases before the tribunal as quickly and as effectively as possible. It was thought that the way to get round that position was to increase the size of the tribunal, and to create divisions within the tribunal to function simultaneously.

Hon. V. S. YOUNG (Waitotara): I want to make it clear that the Opposition is opposed to the Bill. It is opposed to the retrospective terms of reference under which the Waitangi Tribunal is asked to operate. It is opposed to the powers of determination that the Waitangi Tribunal has to make on matters pertaining to land belonging to State-owned enterprises; decisions that it makes are made beyond any form of appeal. It is opposed to those powers. It is not opposed to the tribunal. Indeed, it was the National Government, after the passage of the 1975 Act, that first appointed personnel to the tribunal. The problem that the Government has created, not only for itself but for the whole of New Zealand, is that Pandora's box has been opened and the tribunal is asked to inquire into and make recommendations on disputes that go back almost 150 years, many of which have been dealt with before, in Parliament and elsewhere.

During the Committee stage I spoke at some length on one or two of the claims that are now holding up the tribunal---claims that have been dealt with in the past by royal commissions, by land grants at about the turn of the century, and subsequently by Acts of Parliament. The member for Southern Maori, in particular, knows of the ones to which I refer. One of the reasons that the Government has given for the introduction of the enlarged Waitangi Tribunal is the load that the tribunal is being asked to carry. My colleague the member for Tauranga asked the Minister of Justice in September how many claims were to be heard by the tribunal. The answer then was 166 claims. The tribunal has heard claims at the rate of about one a year. Now there will be not one tribunal, but many tribunals. Will it be four or five tribunals? The answer to that question will be determined by the chairman of the Waitangi Tribunal, who is the Chief Judge of the Maori Land Court. There, again, we can say to ourselves that almost every Bill to do with Maori people or Maori affairs is putting an added responsibility on the judges of the Maori Land Court, and the Maori Appellate Court is almost falling apart under the pressure. To that pressure is being added the extra load given by the Bill.

The House needs to ask itself whether it is not falsely raising the expectations of those who are invited to make submissions to the tribunal. My colleague the member for Tauranga properly put a question to New Zealanders: is the issue of 1988 in fact the same as the issue of 1840? The member for Northern Maori says that justice is justice. I ask him how many times injustice must be corrected; how many times compensation must be paid; and how many times a tribunal, a commission, or even Parliament itself must say a decision is in final recognition of a claim against an injustice of the past---an error or an omission.

I do not blame the Taranaki, the Ngai Tahu, the Tainui, or anyone for going to the tribunal with their cases---that is what the Government has allowed them to do. In fact, one would almost be critical of their representatives if they did not go to the tribunal. However, the cost in social terms, racial terms, and in a divided community---the very cost of presenting those cases---is high. I refer particularly to the Ngai Tahu case. What has it cost already? That case is a long way from determination, and it has already cost

more than \$500,000. The member for Southern Maori shakes her head, but I got a figure from the Minister of Justice at the beginning of the year. After 3 months of this year the indicated cost was much more than \$250,000. The matter has all been resolved before; therefore the Bill is unnecessary, and the terms of reference of the Waitangi Tribunal must be changed.

We have to find real solutions, such as education and employment for the Maori. What kind of philosophy is shared by Government members when they say that we should be examining the Treaty of Waitangi and the events that occurred in 1865? While they are looking at the history books, they are taking away jobs from Maori, who will find themselves on the dole. No one has suffered more from the Government's economic policies than the people who are represented by the member for Southern Maori and the member for Northern Maori. Surely the answer to New Zealand's problems today---and the problems of the Maori people---is education, opportunity, and advancement. Those are the answers; they are the responsibilities that were set out in the Maori trust board legislation for those early Maori trust boards to implement in order to raise the economic and social opportunity of Maori people and to assist with education.

The task is not easy, but New Zealand will be a poorer place if it is not attempted, and a very poor place if it does not succeed. Why dwell on the past? Why appoint additional people to a tribunal that will sit in four or five different places, in different ways, and with different personnel? In some of the deliberations final and binding decisions will be made. I refer in particular to the land associated with the State-owned enterprises. I deplore the cavalier manner in which the Government has dealt with the Tainui people in matters to do with the Coal Corporation, although that kind of determination---

Hon. Mike Moore: I'm not a Cavalier; I'm a Roundhead.

Hon. V. S. YOUNG: The Minister sure is a round head. I can see your very shiny round head from here. The Minister is not without a chance in the leadership stakes early next year. If he could exercise three or four votes himself, and obtain the same number from his close friends, he would get into double figures. The Bill is not a good one. The need for it has not been justified. The present terms of reference of the tribunal are too wide. The solutions to the nation's problems, and those of Maoridom in particular, are being sought in the tribunal hearing, and they cannot be found. I shall vote against the Bill.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): Listeners to the debate could be forgiven for wondering which Bill the previous speaker was talking about. I want to explain exactly what the Bill is all about. It was introduced in May, and has been in the process of being passed for 7[1/2] months. The Bill has been much debated in the House and is now in its last stage. Therefore I shall recapitulate on the purpose of the Bill. It is a response to the increased work-load of the Waitangi Tribunal that has resulted from the extension of the tribunal's powers to consider cases that go back to 1840.

The Opposition opposes an increase in the number of people to deal with those many cases. I ask Opposition members to reconsider that stance. It is most inconsiderate, and, I must add, portrays a stunted vision on the matter---a blinkered perception. Opposition members do not understand the need to extend the powers, the resources, and the personnel of the Waitangi Tribunal to cope with the increased work-load. There is a backlog. That backlog arises from claims---particularly under section 6 of the principal Act---and especially those lodged under the State-owned enterprises legislation. Therefore we need more people to consider the cases.

Parliament has been presented with a report from the Commissioner

for the Environment, who has pointed out in precise detail the need for more personnel, more facilities, and more resources to process the claims. There is wide support for the move to have more than one sitting of the tribunal at any one time. That provision would enable the tribunal to process the many cases before it. There has been opposition to the concept of partnership in the Bill. There is a removal of a racial designation that existed earlier when a majority of Maori people were on the tribunal.

That provision has been removed for two reasons. First, the need to increase the pace of hearings by increasing tribunal membership, and the corresponding need to find competent and experienced members regardless of race. The reason is that not enough Maori people are qualified in law, or are judges of the Maori Land Court. It is necessary, of course, to extend the number of people hearing those cases. Secondly, the need to make it clear that the tribunal is an objective and competent body, and that that objectivity and competence are quite independent of the racial designation of its members. Of course, the tribunal is independent.

However, surely the Opposition's criticism is no longer valid, because the tribunal now will have a reasonably racially balanced membership--balanced as between Maori and non-Maori. However, the tribunal would be one of the very few legal bodies in New Zealand's history in which the percentage of Maori personnel would be anything like equal to that of pakeha personnel. I know of no reason and no validity for the Opposition to criticise that balance. I especially refer to the concept of partnership that is embraced in the Bill. In fact, the word is made explicit by referring to the new, balanced racial composition of the tribunal. The concept of partnership has been focused on particularly by the Court of Appeal in its hearing of the case before it---that is, the application of the New Zealand Maori Council. That term has been associated by implication with the two parties to the treaty, although it has not before been referred to explicitly as the partnership of the treaty. It is a reasonable concept to highlight, especially in this day and age.

The main parts of the Bill deal with the increase in the number of members, the change in the racial balance, the removal of the Maori majority, and the possibility of more than one tribunal, with an increase in the number of members so that the tribunal may meet in different parts of the country to consider separate cases. As a result, processing of the present long list of cases will be attended to. I do not understand why the Opposition opposes the concept behind the Bill. It opposed earlier legislation that gave the tribunal the right to hear cases retrospectively from 1840 to the present day. It opposed the legislation at that time, but to oppose an extension of the membership so that the cases in the queue can be dealt with more expeditiously is not reasonable. There is really no need to debate the matter further. The need for the Bill is obvious, and I support it.

Hon. J. H. FALLOON (Pahiatua): In speaking to the third reading of the Bill, I should like to say that two major issues face New Zealand. The first is economic---and, of course, the crisis in the Government will produce an even greater crisis in the economy than we have had since perhaps the 1930s. Those of us who were watching television saw the Minister of Finance, who has recently resigned.

The ACTING SPEAKER (Mr T. J. Young): Order! What does that have to do with the Bill?

Hon. J. H. FALLOON: I am coming to the Bill. The second major issue is the racial issue. The Bill has been debated extensively under urgency over the past couple of weeks, and a couple of main issues have emerged. First, is it right to extend the number of members of the tribunal? The answer is that it may be if it means

that issues can be resolved. However, there is no chance of resolving issues, because the Government, as it showed clearly in the Committee, is building a nightmare for the future of the people of Maori derivation and for those who are concerned with Maori welfare. The Government is also building a division between people of Maori derivation and others in the community. The more members of the tribunal there are to hear cases, the more cases that will arise.

We know from the Committee stage that of the 66 cases that have been before the tribunal so far, only 12 have been resolved by the Government, and those 66 cases that have been resolved are waiting in the queue for the Government to make decisions. The Government is in utter chaos. I cannot see it making any decisions before the next election---and let us hope that that is early in the new year. We also know that the tribunal has notice of another 160 cases, and that those claimants will expect the tribunal to find for them.

Not only that, other claims have been announced that are not before the tribunal. Recently the people of the Wairarapa, the Ngati Kahungunu, claimed the bed of Lake Wairarapa. We know that Ngati Awa have claimed three-quarters of the Auckland area. So it goes on. It seems that there is no limit. Maori communities throughout New Zealand are deciding to go for the doctor to the tribunal and to look for compensation and some principle to resolve their longstanding belief that they deserve a better deal. The Bill extends the number of members of the tribunal to 16, no more than 6 of whom shall sit at any one time. The tragedy of that is that little cadres of people will be sitting in places throughout the country trying to resolve decisions.

Will there be consistency? How can those members sitting in different parts of New Zealand provide real consistency on issues? If there was ever a matter on which consistency was needed it is in relation to the claims before the tribunal. That group of people will have great difficulty in resolving issues. An example of why I say that is that we know in relation to the Ngai Tahu claim of the South Island that there is another tribe from the northern end of the South Island, the name of which I do not have with me, that is also making a claim as a result of the claim made by the Ngai Tahu people. When the tribunal resolves that claim it will have to consider the other one, and it may be that others will follow.

The tribunal will have the power to refer matters involving boundaries to the Maori Appellate Court. That is another issue that will be extremely difficult over the next few years, because the House has just passed a Bill setting up several boards, many of which will have problems with boundaries. The Maori Land Court and the Maori Appellate Court will be heavily involved in the setting of those boundaries. I can see literally years of litigation. One could argue that as claimants can go back to 1840 it will take more than a few years to resolve some of the differences between communities.

But will the Bill achieve very much for those people? Will it really help relationships, or will it do what I suspect will be even more damage by raising people's expectations? Throughout New Zealand, fishermen fear having their fish taken from them by people who are saying that it is their fish; and we know that it is not. People who believe that they have a right to something may never be satisfied. Young and militant people may join together believing that in some kind of time-warp they can go back to 1840 and resolve the problems by going to the tribunal. The passing of the 1986 Act allows the tribunal to go back to claims relating to 1840. The net result is that militants are taking control of the Maori community.

As a result, moderate people---of whom I meet many on marae and in all parts of New Zealand---are worried. They are saying, ``We do not want to go as far as the Government wants to go. We know that the



difficulties cannot be resolved. We know that the coffers are not deep enough to resolve the kind of claims before the tribunal. Therefore we know that we will be in a position whereby we are appearing to argue against those people who believe that what the Government is saying is correct.' What the Government is conveying to many people is an expectation that the claims can be resolved according to the rights or wrongs of the matter going back to 1840. That will not happen. It certainly did not happen with the Muriwhenua claim in relation to fishing resources.

Already there have been two examples of the Government's having to change its mind. It certainly will not happen with the Ngai Tahu claim of the South Island. The claims are not reconcilable in simple terms, yet many militant people will perhaps persuade others that they may have a case; but those people will be sadly disillusioned when it comes to the crunch. Clause 5, which amends section 7 of the principal Act, relates to the power of the tribunal to defer the claim. That is a change of direction. It seems to me that if the tribunal does not want to hear a claim it can put it aside for as many years as it likes.

In other words, it seems that we have a court that is not really a court, because there is no right to be heard, there is no right of appeal, and there are no real rights relating to a normal court. When people go to this effective court---the tribunal---and say to the court that they want it to resolve a claim that goes back 140 years or so, under clause 5 the tribunal will be able to say that it is not prepared to hear the case and that it can wait a while. It may not hear it; yet in a normal court people would have a right to be heard.

Hon. Peter Tapsell: That's right. It can be declined entirely. One has no right to have a vexatious claim before the tribunal.

Hon. J. H. FALLOON: A case should be heard and considered, and even have a decision come down against it, because the right to defer a case means that people do not have the right to stand before the tribunal and put the case. That is wrong, and it says to me that people will form another grievance. If people are not able to be heard when they believe that they have a right to be heard, and if the tribunal rules against some cases, there will be another problem. That matter was raised in the Committee stage. Many of the individuals in the court may well be accused of self-interest, and that is something I should not like to happen.

WINSTON PETERS (Tauranga): Mr Acting Speaker---

Hon. HELEN CLARK (Minister of Conservation): I move, That the question be now put.

The ACTING SPEAKER (Mr T. J. Young): The House has been on the question now for not quite an hour. The member who is seeking the call has particular interests in the Bill, and I think that I should hear him.

WINSTON PETERS (Tauranga): Mr Acting Speaker---

Hon. Peter Tapsell: What'll the member do?

WINSTON PETERS: The fourth in the relay is always the one who is the fastest---right? That is why I am up here. [Interruption.] It is no use the member for East Cape flagging it in the House now after making that kind of objection. She would not know what the Maori of her electorate want, and at the next election they will tell her so. In the past 5 weeks I have heard some fascinating speeches made by Government members, some of whom are no longer in the Executive. I have heard speeches on race relations from the Minister of Justice; the Minister of Overseas Trade and Marketing; the Minister of Social Welfare; the former Minister of Revenue, lately resigned; and the former Minister of Finance, lately resigned. Those speeches told me that the Labour Party strategy committee and public relations campaign committee have decided on the Maori issues that they are

losing, and the best way to cover those issues is to put a damage-control mechanism in place whereby they all express warm fuzzies and do nothing at all about the matter. The Bill represents that kind of campaign, but it will not work.

Hon. Fran Wilde: The member'll have to do better than that.

WINSTON PETERS: I will not do much better than this, because I am doing fine now, and the Associate Minister of Foreign Affairs should find out what is going on, instead of gallivanting round Nicaragua and other socialist or communist countries posing as some kind of Minister of Foreign Affairs.

The ACTING SPEAKER (Mr T. J. Young): Order! The member must come back to the Bill.

WINSTON PETERS: Precisely, but the Associate Minister made six interjections and I say to her that if I were a junior to the Minister of Foreign Affairs, as she is, I would be ashamed of myself.

The ACTING SPEAKER (Mr T. J. Young): Order! I want the member to come back to the Bill. The member has no right to digress from the Bill to irrelevant interjections. I remind the House that interjections must be rare, reasonable, and relevant.

WINSTON PETERS: The damage-control campaign put together by the Government in recent months tells me that it knows it has miscued and misconstrued the aspirations of the Maori people. The Minister of Police---who is the member for Eastern Maori---knows what I am talking about. The member for Northern Maori said publicly that the Government is proceeding with policies on which there has been no consensus from or consultation with the four Maori Government members. The Minister of Maori Affairs in the House poses as somebody responsible, but he is a puppet of the State Services Commission, of the former Minister of Finance, and of the Prime Minister's Department.

Hon. Peter Tapsell: I raise a point of order, Mr Acting Speaker. I think that you will see immediately that it is wrong for an Opposition member, with whatever intention, to suggest that a Minister of the Crown is a puppet of any group outside Parliament.

WINSTON PETERS: I withdraw and apologise. I have sat here and said nothing while the Minister of Police has made three scathing speeches about me, and tonight is his turn. He has done nothing whatsoever about the crisis of employment, the crisis of crime, the crisis of educational non-performance, and the crisis of failed career futures for Maori people. The Bill should be about those matters.

The ACTING SPEAKER (Mr T. J. Young): Order! The member should come back to the Bill.

WINSTON PETERS: I am getting back to it. The member for Northern Maori said that I was wrong to talk about it not being a course for the future to lock New Zealand into an 1840s time-warp. His speech was about that matter and tonight I shall deal with it. Those Maori members know that I am right. All their people say that I am right. From Paremoremo prison all the way to their kaumatua they are saying that they want a better future.

Hon. Peter Tapsell: And Wira Gardiner?

WINSTON PETERS: Wira Gardiner says it, too. Sir Graham Latimer says it. Every part of Maoridom wants something better than palliatives, public relations campaigns, and flimflam from the Government. So do Roger Douglas, Trevor de Cleene, and Richard Prebble, who are now out of the Cabinet.

The ACTING SPEAKER (Mr T. J. Young): Order! The member knows that he is trespassing in many ways. He moves into relevance then away into irrelevance. Secondly, I remind the member that when he mentions the names of members of the House he has to mention them by their electorates.

WINSTON PETERS: I know that that is correct. The four Maori

members of Parliament have fallen for a public relations campaign. Tonight those four Maori members control the destiny of the next Government. I know there are divisions in the Government. I know how rent apart it is, but those four Maori members are critical of where the next Government will go. The member for Southern Maori will remember full well when her father was in the House in 1957, and the four Maori members decided whether there would be a Labour or a National Government.

An Hon. Member: Where's that in the Bill?

WINSTON PETERS: The Bill is filled with talking about the aspirations of the Maori people, and tonight history is being revisited. The member for Southern Maori knows that, and so does every other Maori member. I hope they do not go along with this hopeless, useless, totally uninspiring, insensitive Government that wants to repeat the next 2 years while they have a chance to decide their destiny. It will be the same voyage of disaster of the past 5 years.

Dr Gregory: I raise a point of order, Mr Acting Speaker. I wonder when the member will come back to the Bill. He spends all of his time talking about everything else but the Bill.

WINSTON PETERS: There is nothing about the 1840s time-warp in the Bill, but in many ways it is all about an 1840s time-warp. A time when the country's economy is one of abject disaster in the eyes of the international world, a time when New Zealand has to face the challenges of the Pacific Basin and the wider world beyond, is not the time to lock social and economic development into an 1840s time-warp. Every New Zealander knows that. It is not that I deny the aspirations of the Treaty of Waitangi, and it is not that we cannot fulfil the spirit of the Treaty of Waitangi, which is inclined to go back to a strict absolutist interpretation that can never work. The member for Northern Maori has been told by his own people that the treaty must be renegotiated. This absolutist doctrine must not be followed, because nobody will live with it---Maori or European. The Government admits that in the Bill. Three years ago the Government said that it was of paramount importance that there be a Maori majority, but tonight it says that it is not needed. If the argument tonight is right, why was the argument of 3 years ago also right?

Dr Gregory: I raise a point of order, Mr Acting Speaker. I ask again when the member is coming back to the Bill.

The ACTING SPEAKER (Mr T. J. Young): Order! I think the member is speaking quite pertinently to the Bill at present. I appreciate the point that he is making and the answer to the controversies that he is entering into.

WINSTON PETERS: I close by saying that the Treaty of Waitangi is all about article 3. Article 3 is about full citizenship. Full citizenship is about, in the next 20 years, being educationally toolled up, having the technology, being educated, and therefore having the right to be equal if one chooses to be. One cannot be equal without education in the world we face. The Opposition's policy is to give Maori now and in the future the right to be free; to be equal if they choose to be because they will have the educational qualifications. That is what the Opposition will promise. That is my answer to the Minister of Police. He asked me what my policy was. The Opposition's policy is to fulfil article 3, and for more Maori than ever before the Treaty of Waitangi will come alive and be a document that unites the country. The member does not understand that a country of 3 000 000 people cannot have a segregated path of apartheid, and succeed. It cannot, and he knows it, because the elevator that took him out of Kaitaia, that took me out of Whirinaki, that took the Minister of Police out of Rotorua, was education. It was the same course and the same path for the member for Southern

Maori. Why deny our own history?

Dr Gregory: I don't agree.

WINSTON PETERS: The member can leave his party and leave the truth of his own life. I am concerned about the people of experience, who know that what they offer their people is real. Ngata knew it in respect of land; Pomare knew it in respect of medicine; and Buck knew it in respect of education. It is high time the member joined the mainstream.

Dr Gregory: I raise a point of order, Mr Acting Speaker. I repeat my question---when will the member get back to the Bill?

WINSTON PETERS: My closing point relates to article 3.

Dr Gregory: I raise a point of order, Mr Acting Speaker.

The ACTING SPEAKER (Mr T. J. Young): I hope that the member is not challenging my decision, because if he is I shall take it as highly offensive.

Dr Gregory: I did not hear your decision.

The ACTING SPEAKER (Mr T. J. Young): I called on the member for Tauranga to continue.

WINSTON PETERS: The Maori people were promised in that article the same rights as British subjects---the right to be heard in a court of law, the right to appeal, and the right to cross-examine. Why are we being denied that now?

Hon. Peter Tapsell: We're not.

WINSTON PETERS: Yes, we are, in this Bill as it has been drafted.

Dr Gregory: I raise a point of order, Mr Acting Speaker. Would the member indicate to the House to which particular clause he is referring?

The ACTING SPEAKER (Mr T. J. Young): I can hear what the member is saying. I am happy that he should proceed.

WINSTON PETERS: I conclude my speech by saying---[Interruption.]

Harry Duynhoven: I raise a point of order, Mr Acting Speaker. It is improper for a member to allege that another member has been sniffing glue, and I ask that that comment be withdrawn.

The ACTING SPEAKER (Mr T. J. Young): If someone has said that I ask him to withdraw the remark.

Mr McClay: I withdraw and apologise.

WINSTON PETERS: I finish by saying that we will not advance the cause of Maoridom by denying the rights, liberties, and privileges that the Crown promised us in 1840. If we do that we offer ourselves a Third World path and the path of black Africa. The National Party and the people in Maoridom who know what the future should offer will oppose that path.

The House divided on the question, That this Bill be now read a third time.

Ayes 46

Anderton; Bassett; Butcher; Caygill; Clark; Cullen; Davies; Dillon; Dunne; Duynhoven; Elder; Fraser; Gerbic; Goff; Gregory; Keall; Kelly; King; Kirk; Mallard; Marshall, C.R.; Matthewson; Maxwell, R.K.; Moore; Moyle; Neilson; Palmer; Prebble; Robertson; Robinson; Rodger; Scott; Shields; Shirley; Simpson; Sutherland; Sutton, J.R.; Sutton, W.D.; Tapsell; Terris; Tirikatene-Sullivan; Tizard; Wilde; Woollaston.

Tellers: Austin; Braybrooke.

Noes 35

Angus; Banks; Birch; Bolger; Burdon; Carter; Cooper; Creech; East; Falloon; Gair; Gerard; Graham; Gray; Kidd; Kyd; Lee; Luxton; McClay; McCully; McLean; Marshall, D.W.A.; Maxwell, R.F.H.; Meurant; Muldoon; Munro; O'Regan; Peters; Richardson; Smith; Storey; Williamson; Young, V.S.

Tellers: Grant; McTigue.

Pairs

For: Lange; Tennet; Wallbank; Wetere.  
Against: Anderson; Shipley; Upton; Wellington.  
Majority for: 11  
Bill read a third time.

#### **4 Sept 1990, 42<sup>nd</sup> Parliament, 2<sup>nd</sup> Session, Hansard Vol 510, pp4201-4214**

#### **Orakei Bill (Introduction and First Reading)**

##### ORAKEI BILL Introduction

Hon. K. T. WETERE (Minister of Maori Affairs): I move, That the Orakei Bill be introduced. The Orakei claim was filed with the Waitangi Tribunal in February 1984. In November 1987, after extensive hearings, the tribunal made recommendations in respect of the Orakei block.

Hon. M. L. Wellington: I raise a point of order, Mr Deputy Speaker. A minute ago the House was on order of the day No. 2, and it was logical to assume that it would then proceed to order of the day No. 3. However, it has not done so. It is now past 10.30 p.m. Could you explain to the House what the Government is up to, particularly as it is after 10.30 p.m.? I read that the Leader of the House stated last week that the House would not take urgency this week, yet it is now in urgency. It is difficult to believe what one is told by the Government. In those circumstances would you be good enough to tell the House exactly what the order of business is at this point?

Mr DEPUTY SPEAKER: It is the right of the Government to introduce a Bill at any time. There is a Bill for introduction and the Minister of Maori Affairs is in the process of introducing it. It is the Orakei Bill.

Hon. M. L. Wellington: Could the Minister start again?

Hon. K. T. WETERE: If the member wants me to do so I shall. I have moved the introduction of the Orakei Bill. The Orakei claim was filed with the Waitangi Tribunal in February 1984. In November 1987, after extensive hearings, the tribunal made recommendations in respect of the Orakei block. In July 1988, together with the Minister for State-owned Enterprises, the Hon. Richard Prebble, and the member for Northern Maori, Dr Bruce Gregory, I as Minister of Maori Affairs announced the Government's decision on the recommendations. The Government agreed to a number of those recommendations, many of which required legislation to be drafted.

Hon. W. F. Birch: I raise a point of order, Mr Deputy Speaker. I am loath to interrupt the honourable Minister but there are two points. The Minister referred to members of Parliament by their names, which, of course, is out of order and is a serious breach. I suggest that he use either the Minister's appellation or the member's constituency. The second point I should like the Minister to consider is that Parliament is about to be dissolved in a few days and there is no prospect of this legislation going anywhere. Select committees cannot sit once Parliament is dissolved. Perhaps the Minister could tell the House what the point is of introducing legislation when Parliament will be dissolved and no select committees can sit.

Hon. Dr M. Cullen: The Bill will be referred to a select committee. It can be advertised, and submissions can be taken in. Of course, the select committee will not be able to sit. It is the Government's intention to include such Bills in the carrying-forward motion that will be moved by the Leader of the House on Thursday.

That will enable the Government, when it is returned successfully after the election, to continue with its programme.

Mr DEPUTY SPEAKER: That is not properly a matter for debate. There is no point of order on the second point raised by the member for Maramarua. On the first point I have to confirm that the Minister should know that members must be referred to by their portfolio or their electorate.

Hon. K. T. WETERE: For the benefit of the member for Maramarua, in July 1988 I, together with the Minister for State-owned Enterprises and the member for Northern Maori, announced the Government's decision on the recommendations. The Government agreed to some of them, many of which required legislation to be drafted. The preparation of the Orakei Bill has involved several Government departments that have all co-operated, worked toward, and supported the kaupapa of the legislation. The Ngati Whatua of Orakei Maori Trust Board has been fully consulted in this process. The Mayor of Auckland, Dame Cath Tizard, and the Auckland City Council and its officers also assisted and worked toward resolution of this matter.

Several of the recommendations on which the Government agreed to act have already been implemented without the need for legislation. The Orakei Bill will provide recognition of rights secured to Ngati Whatua of Orakei by the Treaty of Waitangi in relation to the Orakei block. It will give effect to parts of an agreement reached between the Crown and Ngati Whatua of Orakei, and, in turn, implement with modifications certain of the recommendations made by the Waitangi Tribunal in 1987.

The Bill repeals the Orakei Block (Vesting and Use) Act 1978 and provides for the continuance of the Ngati Whatua of Orakei Maori Trust Board and the revesting of certain of the Orakei block lands in that board. The Bill extends the powers of the trust board. It sets aside certain lands as reserves to be administered jointly by the trust board and the Auckland City Council, and it ensures the protection of land vested in the trust board by imposing certain restrictions on the disposal of that land. The Bill will grant exemptions for rates, reserves, contributions, land tax, and other charges. Finally, the Bill will constitute full and final settlement of any claim that the hapu of Orakei have against the Crown in relation to the Orakei block.

Part I deals with the vesting and status of hapu land in the Ngati Whatua of Orakei Maori Trust Board. Hapu land comprises papakainga consisting of development land, the hapu reservation, and certain land stopped as a road and vested in the trust board. The development land under the papakainga status will provide for those areas in the Orakei block known as the Youthline Trust, community house sites, and Housing Corporation land. The hapu reservation will provide for those areas known as the Orakei marae, church, urupa---burial ground---and access strip. Hapu land also consists of whenua rangatira. That term is used to describe the Okahu park and Bastion Point headlands reserves. The whenua rangatira will also include part of the area bordering the Michael Joseph Savage memorial. Whenua rangatira will be deemed to be set apart as a Maori reservation under section 439 of the Maori Affairs Act 1953 for the common use and benefit of the members of the hapu of Ngati Whatua o Orakei and, of course, the citizens of Auckland. The status of that land will be Maori freehold land within the meaning of the Maori Affairs Act.

Clause 9 provides for the continuance of the Ngati Whatua of Orakei Maori Trust Board, which was established by the Orakei Block (Vesting and Use) Act 1978. The board will be renamed Ngati Whatua o Orakei Maori Trust Board, and, subject to the provisions of the Bill, will continue to be regulated by the Maori Trust Boards Act 1955. The beneficiaries of the trust board are members of the hapu who are

descendants of their common ancestor Tuperiri. A roll of those beneficiaries must be kept and maintained by the board.

Clause 14 sets out the principal duties of the trust board. It will manage land vested in the board as a perpetual estate and turangawaewae for the beneficiaries. Any other assets vested in the board must be managed in the best interests of the beneficiaries. Apart from granting leases of the developed land and easements to local authorities, the board is unable to alienate any part of the land. Clause 18 enables the trust board to name the whenua rangatira. Clause 19 confers on the trust board the sole authority to negotiate with the Crown or any other body on behalf of the hapu in any future negotiations on the customary rights and usages of the hapu. That clause also provides that the Bill constitutes, as I said before, a full and final settlement of any claim that the hapu may have against the Crown in relation to the Orakei block.

Part III relates to the Ngati Whatua o Orakei Reserves Board, which will be established under clause 20. That board will be responsible for the management and administration of the whenua rangatira under section 439 of the Maori Affairs Act 1953 and as a recreation reserve under the Reserves Act 1977. The reserves board will be required to prepare and maintain a management plan to provide for the uses to which the whenua rangatira may be put. Subject to that plan, the board will have the power to enable any of the beneficiaries to carry on farming activity and the conduct of tribal, community, and cultural activities. Clause 25 provides for the reserves board membership, which will consist of six members or such greater even number as may be fixed by the Auckland City Council and, of course, the trust board. Half of the members will be appointed by the council and half by the trust board. They will be appointed for a term of 3 years, and may from time to time be reappointed. The presiding member will be appointed by the trust board, and the Auckland City Council will appoint the deputy presiding member. Part III also provides for procedural matters relating to the reserves board.

Miscellaneous provisions in Part IV include the provision that development land can be used, developed, and subdivided for housing purposes. Exemptions are granted for hapu land in relation to land tax and reserve contributions. The whenua rangatira and the hapu reservation are also exempted from the payment of rates and other charges that may be imposed by the Auckland City Council. While development land remains undeveloped it will also be subject to the same exemptions.

In conclusion, I point out that the recommendations of the Waitangi Tribunal concluded with the following words: ``These recommendations we make that the Crown may yet support its treaty commitment to Ngati Whatua...A tribe that initiated and aided substantially the establishment of Auckland on its land, that stood by the Crown, that held fast to law and order despite every vicissitude upon it, and suffered the most dreadful consequences and then through no fault of its own---and great fault on the part of others...''. I therefore recommend the Bill for the support of the House so that Ngati Whatua o Orakei can begin to heal the wounds that were inflicted upon them, and once again can take up the mana that was wrested from them.

The ACTING SPEAKER (Mr T. J. Young): This is not a money Bill.

Rt. Hon. Sir ROBERT MULDOON (Tamaki): I was most interested in the Minister's last comments about the mana of Ngati Whatua of Orakei. They were interesting words coming from a member of the Tainui people, who were, of course, historically the original inhabitants of the Tamaki isthmus. The land referred to in the Bill is in my electorate, and the claim of the Ngati Whatua to that land arises

from a comparatively recent historical time---the late eighteenth century when they came down from Rewiti in the Helensville district and conquered the original people of the Tamaki isthmus. They obtained it in comparatively recent historical times by right of conquest. The Minister knows that his people have a prior claim and all the business that we go through in legislation of this kind is artificial historically.

That is not the only reason that Opposition members will oppose the introduction of the Bill. One reason is the manner in which it was brought in. The Government has had that recommendation of the Waitangi Tribunal in front of it for a very long time. It made the decision to pay out a lot of money, but it did not introduce the Bill until it was too late for it to be passed in this session. Indeed, I am told that the Government did not even put it on the list of Bills that will be carried over. So the Bill's introduction is merely a political gesture. One of the reasons that Opposition members will vote against it will be to force Auckland members of Parliament on the other side of the House to vote for it. I can tell them that in electorate after electorate their vote will be noted by their constituents, and it will be held against them on election day.

The Bill repeals an Act that was passed unanimously in 1978. The Orakei Block Vesting and Use Act of 1978 was passed with the present Minister voting for it ``in full and final settlement'', to use his words tonight, of the grievances of the Ngati Whatua of Orakei. That Minister and the other three Government members at that time, who are all still in the House---it will be interesting to see which way they vote tonight---were asked specifically by letter from the elders of the Ngati Whatua of Orakei to vote for the Bill because they were told it was an honourable and final settlement of their ancient grievances. That is another matter in which the Waitangi Tribunal is creating disharmony between Maori and pakeha.

The matter has been resurrected by people who in 1977 when my Government was negotiating successfully with the people of Ngati Whatua were named by the elders as dissidents, and Joe Hawke was the leader. They said: ``Take no notice of those people, they're not the Ngati Whatua, they're not our representatives. They don't live at Orakei, they're not our people.''. A settlement was reached with the elders. The three Ministers---the Minister of Lands who is still in the House, the Minister of Maori Affairs who at that time was Duncan MacIntyre, and myself as Prime Minister and the member for that particular area---held a meeting with the elders in the council chamber of the Auckland Town Hall. It was held there because the marae at Bastion Point was not the Ngati Whatua marae but a marae available to all the Maori people of Auckland. It was not thought appropriate to hold the meeting there. It is true that Te Puru o Tamaki, Tommy Downes, who was the paramount chief at that time, disagreed---he was the custodian of the marae---but with that sole objection the rest of the elders met us at a solemn meeting, and it was a very moving occasion.

It was resolved between us that the agreement reached on that occasion was to be the final settlement of those ancient grievances. They then wrote to each of the Maori members of Parliament and said: ``Please vote for the Bill that will be introduced---it restores our mana.''. Those are the very words used by the Minister tonight. The mana was restored in 1978 and it is only the Waitangi Tribunal business that has raised the issue again. I ask the Minister this: if it can be raised again more than 10 years later, what will stop it from being raised again 10 years from now?

No sooner had the Government accepted the recommendation of the Waitangi Tribunal on the matter than other members of the Ngati Whatua put in a new claim for what is, in plain language, all of the



land of the city of Auckland as well as all the land on both coasts as far up as Kaipara. Nothing was settled, except perhaps the matter of Bastion Point, and that was settled in a solemn agreement between the Crown and the elders of the Ngati Whatua in 1977 and implemented in legislation in 1978. The Bill is wrong. The people of Auckland---I mean all the people of Auckland, not just the Ngati Whatua and certainly not its dissidents who led this later claim---were scandalised when, after the Government's servile acceptance of the tribunal's latest recommendation, a new claim was made for the whole of the city of Auckland as well as for all the land on both coasts up to Kaipara.

What is the value of that? If the claimants received \$3 million plus other things for the little body of land called Bastion Point---which the Labour Government during the time of the Kirk/Rowling leadership intended to subdivide for ordinary housing, at a time when Mat Rata was the Minister of Maori Affairs and the member for Northern Maori---what would the taxpayers be up for in a new claim for the whole of the city of Auckland as well as all that extra land? The claim was settled honourably and with dignity in 1977 and was endorsed by an Act of Parliament in 1978 with a unanimous vote that included the votes of all the four present Maori members. There is no reason for that position to be upset, and that is the reason Opposition members will vote against the sham introduction of a Bill that will fall off the Order Paper when Parliament rises in a few days' time.

The Minister knows that the Bill is a sham. It will deceive no one in the city of Auckland who has any understanding of those matters. Tonight we will see which way Government members representing Auckland City will vote---whether they will vote in accordance with their party's rules, or whether they will vote in accordance with their constituents' views. It will be an interesting vote for some of them because they are very close to the time when they will lose their seats.

Dr GREGORY (Northern Maori): I listened to the member for Tamaki, and it is probably one of the few times that I have ever followed him in a debate. The first question I had to ask myself was whether that member had read the Bill. I say that with some seriousness. [Interruption.] If the member for Pakuranga will listen I shall come back later to what he said. The Bill covers a much greater area of land than the agreement that the member for Tamaki has referred to---that is the relevance of the Bill. It does have some significance to the mana whenua of the people of Tamaki Makaurau. I make that point because the total area of land that is being considered in the Bill is not the only area that the member for Tamaki is referring to. It also refers to a significant area of reserve land that is probably about at least double the area of land that he thought the Bill covered.

I listened with interest to the history that the member gave. It is probably one of the sad sagas in the recent history of this land. I do not think there are too many people in Auckland, let alone in New Zealand, who do not recall the time when a large unit of police was stationed around part of that area, and that led to some considerable bitterness. Events occurred at that time that would certainly appear to be suspect, and a sense of pressure was brought to bear in some instances on those elders. The very thorough investigation that was carried out by the Waitangi Tribunal during a considerable period of time exonerates and gives force to the Bill that is before the House. [Interruption.] I am talking about the Waitangi Tribunal, which investigated the matter. I listened to the member for Tamaki expounding some of the history of the time with a certain degree of cynicism. The history of the Auckland isthmus is

considerable, and goes back a long way in history. Some of the old maps of the area show that a large number of tribal groups would claim, even today, some mana within that area of Auckland.

Some of the marae that are being built at present, including one on the North Shore---another unfortunate sad saga occurred when the Orakei marae was burnt down---are signs of the times. The emphasis was to bring back those factions that would not have been reconciled under the terms of the settlement implemented by the member for Tamaki when he was the Prime Minister. Government members have not pushed to implement the matter; it has come from sectors of Maoridom in Auckland that felt a sense of injustice about decisions that were made in the past. They have seen fit to refer the matter to an institution that has its own mana---a mana that is respected not only by the Maori but also by many pakeha people or other New Zealanders of the land. The Government has recognised the decision, and considered that it is just and fair. It moved to implement those decisions in a way that it felt was relevant to the degree of injustice that resulted from previous decisions that were made.

Members can cast their minds back to the days when the marae was shifted from Okahu Bay where the old whare runanga was burnt. People were almost forcefully moved on to the adjacent hilltop. All of that was still much a part of the psyche of the elders of that time, and it has been passed on to future generations. What the Government is attempting in the Bill will go a long way to redressing that---[Interruption.] I am referring to Kitemoana Street. People were almost forcefully rehoused there. I have lost my train of thought, but I will come back to it.

The Bill addresses a larger area of land. If members were to examine that matter, it would appear that many Aucklanders felt at the time that the matter was previously addressed by the Government of the day---that a large part of the land was to be used for housing the lite of Auckland. Whether or not that is true, it is certainly the impression that was given, and I think that there was some truth in it. Much of the land would have been taken, sold, and used to house some of the wealthier people of Auckland, and it would have been lost to the Maori people for whom the need was great.

So the Bill addresses a much wider area of land on the basis that housing should be provided for those people, and a financial commitment of about \$3 million was made. I should like to canvass one or two other matters. I have been approached recently by people who would come back to the matter of the whakapapa or the genealogy of segments of Maoridom within that area. The Bill does address a particular tupuna---Tuperiri---

Mr McClay: It won't do anything because we won't pass it.

Dr GREGORY: The member for Waikaremoana should dry up. The problem is that some members perhaps do not realise the relevance and the significance of whakapapa and genealogy to the Maori. To say that it is a waste of time is a typical reaction, and leads only to frustration of the continuation of the Government's attempts to reconcile and to bring back a sense of justice to some of the injustices that have been done in the past.

Maurice Williamson: Was the land originally Tainui?

Dr GREGORY: The history of that area of Auckland is very rich. I did not say Tainui. I could name a significant number of tribes that have inhabited that part of Auckland. Two tupuna were the Tuperiri Apihai Te Kawau, and there is a Tainui contribution to one of the tupuna but not to the other. So at different times there has been a movement of Tainui to that area. The Ngati Whatua have moved many times, and the Ngati Awa have also moved to that particular area. The Kawarau was a tribe in its own right, and the Nga Puhi have also moved there. There has been a significant tribal entry into that

area.

Maurice Williamson: Who has the right to claim?

Dr GREGORY: The matter must be addressed from the examination of history that is before the Maori Land Court at present. The matter must be related to the Treaty of Waitangi and to the people who lived there at the time that the transactions took place. That is a relevant part of Maori history that would fall upon predominantly pakeha deaf ears. It is not often relevant to their thinking in relation to ahi ka and land ownership at the present time.

WINSTON PETERS (Tauranga): For some totally unaccountable reason business has been very difficult today. I say straight up that the Opposition is opposed to the proposed Bill, and will vote against it. The reasons are very simple.

Hon. Dr M. Cullen: Copycat---Rob said that already.

WINSTON PETERS: No, the matter relates to the Ngati Whatua of Orakei Maori Trust Board, about which the settlement is being devised. However, the House passed the runanga iwi legislation last week, which the Minister said was of paramount importance to the future running of Maoridom. He said that New Zealand needed a register of authorised voices.

I want to know why, just 3 days after the passing of the runanga iwi legislation---which the Minister described as being the most important this century---the so-called official authorised voice is no longer required. The Bill is totally inconsistent with that legislation in the form of the Ngati Whatua of Orakei Maori Trust Board taking over the management of reserve land in concert---

Dr Gregory: It makes reference to the trust boards in the Bill, too.

WINSTON PETERS: The Bill does refer to the trust board. So all that it does is reinforce what was said by Opposition members: that the runanga iwi legislation was totally unimportant and that, if it was important, so much more had to be changed to make it consistent with what the Labour Party claimed was necessary. What of the runanga iwi of Ngati Whatua? Why was settlement not devised to be made with them if it was as the Minister described it---the most important legislation this century?

Secondly, what happened to the matter with respect to future consideration by the Maori Affairs Committee? The member for Northern Maori, the chairman of that committee---and I am not speaking out of turn because that is part and parcel of the business that my colleagues and his colleagues are entitled to know---came to me asking what business we would recommend to Parliament to be carried over for the Parliament that begins after 27 October, when we will have a new Government. That member left out the part about the new Government, but I know that in his heart of hearts he meant when we have a new Government and when Matiu Rata is on the select committee. I thanked him for his vote of confidence.

Opposition members can agree with the Maori Affairs Bill. We can agree with the Maori Purposes Bill, but we cannot possibly agree to the carrying over of a Bill that we have never seen and will not see when the House rises on Thursday. The Maori Affairs Committee will not sit before the end of Thursday; consequently, we will not see the legislation. After 3 years in Parliament, the member for Porirua should have learnt that. We should not seek to bind future Parliaments for consideration on such an important matter, notwithstanding that the Standing Orders allow that to happen.

Thirdly, Opposition members cannot support legislation when, in 1978, the outsiders---the Hawke family---were left out according to the records.

Dr Gregory: No, they weren't.

WINSTON PETERS: Yes, they were. The elders left them out, and so

did the four Maori members of Parliament; two of whom are here today.

Hon. K. T. Wetere: When?

WINSTON PETERS: In 1978. Yet, 9 years later, by November 1987, they have become the chief claimants. How, in November 1987, can the Waitangi Tribunal hand down a recommendation upsetting an Act of Parliament that was unanimously supported by both National Party members and Labour Party members? More important, can the Labour Party support, as a consequence of the elders writing personally to the Minister of Maori Affairs, the Minister of Defence, the member for Northern Maori and the member for Southern Maori---

Hon. K. T. Wetere: It's carried across.

WINSTON PETERS: Those members were written to by the elders in 1978, asking that they support the Government settlement. They went into caucus and persuaded their party that the legislation was worthy of support. Now, just 9 years later, that Minister agrees with the Waitangi Tribunal and the recommendations that it made because he changed the law, taking the ambit of consideration all the way back to 6 February 1840. It is his fault and the fault of the former Prime Minister. Just 9 years later he agrees with it. Now, 2 days before Parliament rises, he brings legislation into the House, with no notice to the Maori members on this side of which there are more than one, or to the Opposition spokesman on Maori Affairs of which there is one, and expects us to consider it. He says that he wants a change. How does the Minister explain his inconsistency?

Hon. K. T. Wetere: I've explained that, the member wasn't here.

WINSTON PETERS: I heard the Minister. He did not give any kindergarten Maori again, either---not since we mentioned Shakespeare and the classics in the Maori language. Why is the \$3 million compensation payment mentioned in the Waitangi Tribunal findings not to be found in the legislation?

Hon. K. T. Wetere: The member didn't listen to my speech.

WINSTON PETERS: Nobody did. People ceased to do that on 18 October 1986 when the Maori loan affair first broke. Fourthly, the 1978 Bill was supported unanimously by the House as a result of elders writing to the four Maori members. Why, after such a short time, are we changing it? Is it possible 10 years down the track for Ngati Whatua or an assemblance of that tribe to turn up at the Waitangi Tribunal with a new claim and demand future legislation? We cannot support that clear record of failure to keep a consistent line about what that people rightly or wrongly claim to be theirs. Settlements should at least last more than 9 years, and in this case it is not good enough.

Fifthly, I refer to clause 15. Other matters will be considered some time in the future if the matter ever comes back before Parliament. Clause 15 prevents alienation. How can Maoridom ever be a mature race and how can it ever be equal with the remainder of New Zealand if it is to be treated constantly like a child? Why does that clause state that the Ngati Whatua may not alienate their land? Why are there special requirements, conditions, and caveats on the quality and quantity of ownership that apply only to Maori? The Labour Party has never forgotten its socialistic attitude to the Maori---that they have a place, and it is never at the top. It is always lower than the middle, and it is usually at the bottom.

I turn to clause 23, which empowers the reserve board to grant leases or licences over any part or parts of the whenua rangatira to enable any of the beneficiaries to carry on any farming activity or to conduct any tribal, community, or cultural activities. Can that be done despite the zoning requirements that apply to landowners in the rest of the Auckland region and to Ngati Whatua land? Opposition members do not support the legislation, and, in case anybody is under any misapprehension, we will vote against it.

WARREN KYD (Clevedon): The legislation is welcomed into the House by the Opposition for one reason: it enables the people of New Zealand to see what a shallow Government this is, and how divided and inadequate it is in relation to racial legislation involving Maori people. The settlement was made in July 1988. The Waitangi Tribunal came up with its decision, yet 2 months later the legislation comes back to the House when it has no prospect of being passed. It is a sham, it is a delusion, and it is totally wrong.

The member for Northern Maori mentioned that more land was involved in the Bastion Point settlement in 1988, and that therefore that decision should not be followed. The Waitangi Tribunal decision makes it clear that the Crown's action in 1978 was consistent with the principles of the treaty but was inconsistent in that the reparation did not include a wider range of grievances and was limited to only two blocks taken under the Public Works Act. In other words, the Waitangi Tribunal said that not enough compensation was given, and further claims have been dredged up and mentioned. However, the matter was settled in 1978. All Maori members and both sides of the House agreed, yet because the Waitangi Tribunal came up with a decision in 1988 the House now is dealing with legislation that overturns its own decision that it made in 1978.

The 1978 settlement was honourable. I should like to read a quotation from the Bastion Point judgment of Mr Justice Speight: ``The substituted scheme of 1978 approved by the Maori elders and adopted by Cabinet is a handsome remedy for past wrongs, whether they be real or imagined. The public in general will applaud that much of this vacant land will be public reserve accessible to all. An insignificant area will be sold and doubtless will provide necessary finance. The largest area will be vested in the trust of the Ngati Whatua tribe. If there has been conflict and animosity, this scheme, worked out by four wise men, and acceptable to the majority of the tribal elders and to the Government appears, if I may say so, to bring peace with honour.'`.

Only 10 years later that decision was overturned although all the tribal elders, the Crown and both sides of the House---including the four Maori members---had agreed. The Government was completely wrong, wishy-washy liberal, and extreme when it decided to pass the legislation. The people of Auckland will have the opportunity to judge the Bill and make their own conclusions on it. There were faults with the tribunal at the time that the decision was made. It had a statutory Maori majority, which, as a result of pressure from the Opposition, I am pleased to say has been removed.

Dr Bill Sutton: What difference did that make?

WARREN KYD: Many people who wanted to appear, such as a Mr Sutton from Hawke's Bay, did not have the opportunity to do so. There was also no right of cross-examination before that tribunal. The Opposition considers that the 1978 tribunal should have been accepted as a full and final settlement. By passing the Bill the Government is setting a precedent that will apply to land claims up and down the country that have been settled for a long time. Settlements that were entered into in good faith at the time may now be overturned because the Government seems to accept that honourable settlements are no longer sacrosanct but can be changed at the whim of passing Governments. The Opposition regards the Bill with grave suspicion, and considers it to be a precedent that the country may well resent in the future. We point out that the Tainui tribe and Ngati Whatua tribe are both claiming wider areas of land in that vicinity---indeed, land involving much of the North Island. Opposition members are concerned that if the 1988 decision is followed as a precedent settlements that were never envisaged may take place and the fears of Auckland people may well be realised.

Dr Bill Sutton: Rip-offs.

WARREN KYD: Yes, there may have been crooked deals, but the 1978 decision was an honourable settlement, and both sides of the House voted in favour of it, as did the four Maori members of Parliament and all of the elders of the Ngati Whatua tribe. The Government has now turned its back on that decision.

Dr Bill Sutton: Has the member read what it's all about?

WARREN KYD: I have read both decisions, but the member for Hawke's Bay obviously has not read them. I wonder what his constituents think about the Government's turning its back on the 1978 decision. What will he say about claims in his electorate that may be overturned by the precedent set by the 1988 decision of the Waitangi Tribunal, which the Government has been so quick to capture? The Bill will never see the light of day. It is futile. I understand that much of the legislation has been implemented. I ask the Minister about the statutory authority to implement the legislation. If the Government thought that the legislation was necessary why did it not bring it in at the time? Why has it waited for more than 2 years to bring in the Bill, knowing that it would not be passed? Is it because there has been criticism of the Government's failure to implement Waitangi legislation recently? The Bill is not honourable, because the Government knows that there is no prospect of its being passed. Let the people of Auckland judge during the election campaign whether they like the Government's handling of Waitangi issues. The Bill is a bad precedent, and one that the Opposition opposes. We will be opposing the introduction of the Bill.

Hon. V. S. YOUNG (Waitotara): The member for Southern Maori got to her feet, and I thought that she might be going to offer some comments on the Bill. After all, she was in the House and supported the Orakei Block (Vesting and Use) Bill of 1978. I was Minister of Lands from 1976 to 1981. The development proposals for Bastion Point were originally developed in the time of my predecessor as Minister of Lands, the member for Northern Maori at the time, Matiu Rata. That point is often overlooked. The development proposals were made public in 1976. A considerable amount of controversy was aroused, and as a result Cabinet appointed an advisory planning committee consisting of the Commissioner of Crown Lands in Auckland at the time, Professor Hugh Kawharu as he was then, Dr Lindo Ferguson, and Mr Holdoway from the Auckland Regional Authority. That group of people consulted widely and brought forward a recommendation that significantly changed the nature of the proposed land use.

That recommendation was considered by the Government. The changes were substantial. The original area of 29 acres---that is how it was recorded---that was set aside for subdivision and for sale for private housing, was reduced to 5 acres. Land set aside for public reserve remained at about 22 acres. About 4 acres was set aside for Youthline Trust. The proposal had originally been for 1 acre, and for Maori housing and reserves to be vested in a new tribal trust. Instead of the original 7 acres being set aside, the proposal that was put to the Government and accepted in 1978 was that 29 acres be set aside. In addition, the Kitemoana rental houses were to be transferred to the tribal trust.

As the member for Tamaki, a former Prime Minister, outlined, when the three former Ministers, of whom he and I were two and the third was the Rt. Hon. Duncan MacIntyre, met the elders of Ngati Whatua from Orakei in the Auckland Town Hall committee room the proposal that was put to them was acclaimed. I know that the member for Tamaki will remember that those with us there broke into song and indicated their appreciation of and gratitude for what Mr Justice Speight properly called a generous solution to a very difficult problem.

One of the problems throughout the matter was the illegal

occupation of Bastion Point. The member for Northern Maori referred to the day when the squatters, the illegal occupiers, were removed. I tell him that that took place in the shadow of confrontations like that at Wounded Knee in North America, and some people who were active in the Bastion Point dispute would have enjoyed seeing violence and disruption on that day.

Hon. K. T. Wetere: Disgraceful! Very disgraceful!

Hon. V. S. YOUNG: The Minister of Maori Affairs knows that. The matter was resolved. The decision was acclaimed by the people representing Ngati Whatua. The arrangements were generous---

Richard Northey: Nonsense!

Hon. V. S. YOUNG: The member for Eden questions that statement. Let him get to his feet and take part in the debate. I remind him that a formula was devised under which land and buildings passed to the Maori trust. They were valued at current values. Against that, a contra was to be allowed for those portions of Bastion Point that were not acquired from willing sellers---the battery reserve, which was taken in 1889, and block 4A2A of 10 acres, which was taken in 1950---although compensation at what was considered to be current Government valuation was given when the land was taken. The net result was that land and buildings valued at \$2 million, against which there was a contra of \$250,000, passed to Ngati Whatua. The Government accepted the proposal that that ought to be limited to \$200,000. The solution was fair. It was accepted not only by the people but in this House. The Orakei Block (Vesting and Use) Act 1978 was passed without dissent only 10 years before another decision was made by the Waitangi Tribunal. Therefore the question one must ask is how many times must the same controversy be resolved.

Hon. K. T. Wetere: Ha, ha!

Hon. V. S. YOUNG: The Minister of Maori Affairs may well laugh. He may well operate on the principle that controversies and disputes are never resolved, but should be looked at every 10 or 20 years. As my colleague has said, a full and proper settlement was negotiated and confirmed, then brought before the Waitangi Tribunal once more. A large part of those findings were found by the tribunal to be fair, but the tribunal went further than that. If one is to place credence and confirmation in the recommendations of the Waitangi Tribunal, how often must it be asked to make a recommendation on the same issue?

Hon. K. T. Wetere: It's the first time.

Hon. V. S. YOUNG: No. The Minister supported the 1978 legislation. He is now bringing in another Bill, and, as my colleagues have said, it is a farce. The Bill will not be considered by the Maori Affairs Committee. It should be rejected.

Mr McCLAY (Waikaremoana): In many ways Maoridom is being demeaned by the way in which Parliament is dealing with the Bill in its dying hours. The Minister of Maori Affairs knows well that the Bill cannot and will not be passed. He also knows, as his colleagues do, that it will not go to a select committee. It cannot be and will not be carried over to the next Parliament. For that reason alone I cannot support it. Like everything else that has been going on in this place today it is a charade. The Opposition will not accept it. It will not allow the Government to use Maori people as a pawn in some political game that it wants to play in the eleventh hour of Parliament. It is disgraceful. It is a shameful misuse of Parliament. Instead, Parliament should be given the opportunity to pass some of the Bills that have been before it for some time and that need to be passed---for example, the Fire Service Amendment Bill (No. 2), which is half-way through. Any fireman would want it to be passed.

John Banks: What about the Resource Management Bill?

Mr McCLAY: Yes. Parliament is half-way through that Bill, yet the Minister of Maori Affairs seeks to introduce a Bill that he knows

will not be passed. He has had so much time. The Waitangi Tribunal made its recommendations in 1987. What has the lazy Minister been doing for 3 years? If he really wanted to implement the findings he would have introduced a Bill in 1988, 1989, or even earlier this year. The Bill typifies the Government's mismanagement of matters Maori. The Government cannot meet the recommendations of the Waitangi Tribunal, so it pretends to want to meet them. It pretends by introducing the Bill. Maori people will not be fooled. They know that the Bill cannot be implemented. It is symptomatic of the Government's mismanagement of Maori issues. For 6 years the Government has been giving Maoridom very high expectations knowing very well that it cannot meet those expectations. It has split the community down the middle. That is what the Minister and his colleagues have done. It is disgraceful. The member for Southern Maori may shake her head, but she knows from the effects on her people that that is exactly what has happened.

The Bill provides for recognition, it gives effect to parts of an agreement, and it repeals things. It does not, however, re-enact the provision of the Orakei Block (Vesting and Use) Act. When that Bill was reported back from the select committee in 1978 the present Minister of Maori Affairs quoted from a letter that he and his colleagues, the Maori members of Parliament at that time, had received from the Maori people. I shall read it to him so that he can reconsider whether he voted wrongly then or whether he is doing a stupid thing now on behalf of his Maori people. The letter stated: ``We now extend our appeal to all Maori members of Parliament, and especially to the elected representatives of the electorates in Eastern, Western, and Southern Maori, to give their support to this Bill so that the mana of our people may be restored.''

John Banks: Who said that?

Mr McCLAY: That is what the Maori people wrote to the Minister. He listened to them then and obeyed them, and not once did he vote against that Bill. Now he is asking the House to pretend that Parliament is about to get rid of it. It is a charade. It is a disgrace to the Minister and to his race that he is using Parliament and his people for a silly political end. I cannot wait to see the Auckland members of Parliament go into the lobbies on the Bill.

It provides for the recognition of rights secured to Ngati Whatua. We have not had an answer. What about the Tainui people? Could a Government member tell the House about the Tainui people who have the rights to that particular land? The Bill is a fraud in every reason given for its introduction.

Paragraph (b) of the explanatory note states that the Bill ``Gives effect to parts of an agreement reached by the Crown and the Ngati Whatua of Orakei, to implement with modifications certain recommendations made by the Waitangi Tribunal in November 1987''. I ask the Minister why it has taken so long. Why has it taken from November 1987 until September 1990, especially when the Minister knows that the Bill cannot be implemented by this Government? Both the Minister and the Government have failed.

Paragraph (c) states that the Bill ``Repeals the Orakei Block (Vesting and Use) Act 1978, which implemented an earlier agreement reached by the Crown and representatives of the Orakei hapu of Ngati Whatua''. What was wrong with that agreement? The House has not been told. Why did the Minister speak so strongly on the Bill, as was recorded in Hansard, Volume 421, at pages 4164 and 4165? He supported Hon. Ben Couch at that time. He was supported also by the member for Otahuhu, who is the present member for Panmure. They all supported that Bill, and tonight the Government pretends it wants to repeal it. The Government does not really want to repeal it. It just wants to pretend. I think that is an utter disgrace.



The Government is using this Bill, using its members, and using Maoridom because it thinks that it will be of some use during the election campaign. The Minister of Maori Affairs will be campaigning all around the villages in the north saying that he has introduced the Bill and that he is doing it for them: ``The Waitangi Tribunal recommended it in November 1987. We are very fast in our department. We have brought it in 2 days before Parliament folds up.''. The Bill cannot be passed. It will not have gone to a select committee. There will be no submissions. I doubt that the Minister has the ability to ensure that the Bill is carried over to the next Parliament. If it is carried over the new National Government will clean up the Bill for the Minister. A National Government would clean up all the messes that he has made in his portfolio and dropped all over New Zealand. A National Government would do that. It has got the people and it is willing to do that.

The Bill is a Claytons Bill. It is a sham, and for that reason alone I do not accept the Bill. The Minister is seeking to demean Maoridom. He is seeking to use Maori politically as the Government has done in the past 6 years. The member for Southern Maori is distraught about the Bill. She received that letter back in 1978. Was she here then?

John Banks: She's been here since 1948!

Mr McCLAY: She cannot have been here as long as that. She obeyed the letter and voted with the Government of the day. She will tell the House her opinion of this sham, this Claytons Bill.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): The House has not heard so much the art of politics but the artifice of political debate from the member for Waikaremoana. The suggestion that the Bill is a sham because it is introduced now intentionally conceals the fact that it will proceed in the manner in which Bills normally proceed.

The Bill will be continued in the next parliamentary session. It will be before the Maori Affairs Committee. Submissions will be received on it, and the only reason it would not proceed would be that its passage was prevented should the Opposition come into power. The Bill is being introduced in the normal manner of all Bills, and it will go before a select committee in the normal manner of all Bills; it will have submissions made on it and then it will be enacted, one would hope, by Parliament. Let not the misleading suggestions that the Bill will not proceed be made by people who should have more experience than that.

I assure my Ngati Whatua electors who may be listening to the debate that the Bill will follow the course that all Bills follow unless a Government reverses the normal procedures that apply to Bills. Who would dare do that? Who would dare reverse the normal manner in which Parliament conducts its business?

Hon. Annette King: The Tories.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN: The Minister has given the right answer. That will be the only circumstance in which the Bill will not proceed. I want to make a third point. The Waitangi Tribunal did not have the power to consider cases that arose before 1975 when it was originally introduced. Therefore the matter could not be considered in the manner in which the Bill is being considered without the change in the jurisdiction of the Waitangi Tribunal back to 1840. Those are the simple reasons for the introduction of the Bill.

The jurisdiction of the Waitangi Tribunal now goes back to 1840, and therefore the Bill incorporates the Act of 1978 and extends its capacity according to the finding of the tribunal. I clarify those three points for all Ngati Whatua people who may be listening to the

debate.

Hon. M. L. WELLINGTON (Papakura): While the member for Southern Maori was making a few comments---and I shall come to those in a minute---I had a look at Hansard, Volume 421, at page 4169, which shows that when the matter was last before Parliament the member who has just resumed her seat, and the member for Western Maori, who is now the Minister in charge of the Bill, were two of the four Maori members in the House. The member for Northern Maori was not here but his predecessor, Mat Rata, was here.

John Banks: He's coming back.

Hon. M. L. WELLINGTON: I have no doubt that he will displace the incumbent. He has every disadvantage created by the Government, which said that it would not do the things that it has done. Mat Rata will win the seat. However, I return to the Bill. The only other Maori member I have not mentioned is Brown Reweti, whom some of us remember as a very pleasant and good bloke. He was the member for Eastern Maori at that time. Of the four Maori members at that time two have since gone---one of whom is trying to get back into Parliament---and the remaining two are the member for Southern Maori and the Minister for Maori Affairs, who, according to Hansard, supported the 1978 Act.

Opposition members and many people in Maoridom want to know what has inspired the Minister to bring in the Bill in total opposition to the stand that they took so long ago. I turn to the comments made by the member for Southern Maori. It was nonsense to pretend that the Bill could proceed. The Bill cannot proceed constitutionally because in a few days' time the House will be dissolved, and the dissolution will lead to the scrapping of the Order Paper. It ceases to exist. That is what dissolution means. The select committees appointed by the House cease to function for the same reason.

Rt. Hon. Sir Robert Muldoon: Disillusioned by a dissolute Government.

Hon. M. L. WELLINGTON: Both reasons apply. The disillusion has been brought by a dissolute Government that has brought disgrace upon itself in its last days. The Minister of Justice did not support the new Prime Minister. He has changed sides, like so many Government members.

Mr SPEAKER: Order!

Hon. M. L. WELLINGTON: I shall come back to the Bill.

Mr SPEAKER: Order! I should be grateful if the member would do that.

Hon. M. L. WELLINGTON: Constitutionally, the Bill cannot proceed, nor will it proceed for the simple political reason that there will be a change of Government. The Opposition will vote against the Bill. It will not survive for that reason. Part III deals with the membership of the reserves board. Clause 25 (1) states: ``The Reserves Board shall comprise 6 members or such greater even number of persons as may be fixed by agreement in writing between the Auckland City Council and the Trust Board.''. That is a most unusual provision. Why is there an alternative, what greater even number does the Minister contemplate, and why is the Bill in doubt about such basic issues as the membership and the size of the reserves board? Why is the membership open-ended?

Clause 28 deals with the meetings of the reserves board and states that the first meeting of the reserves board shall be held in the city of Auckland---and one can understand that---within 6 months of the date of commencement of the legislation. The strange part is that the meeting will be at a time and place to be appointed by the Auckland City Council. Why has that provision been included? The Auckland City Council and the Aotea Centre are terms that have become completely synonymous, and one has no faith in the Auckland City Council under its present mayor, given the evidence before the public

at the moment. Why does the Auckland City Council determine when the reserves board meets? Why has authority been given to the Auckland City Council in that respect? I raise that question because clause 29 deals with remuneration and expenses of members of the reserves board. Although the reserves board will be called to a meeting by the Auckland City Council, the fees and travelling allowances paid to its members will be paid out of money appropriated by Parliament. That is a most unusual measure.

The Bill states that the fees and travelling expenses shall be paid to members of the reserves board who are appointed by the trust board, and so on. Why will the board be paid by the taxpayer yet have its meetings called by the Auckland City Council? Furthermore, clause 28 states that the reserves board shall hold meetings at successive intervals of not more than 6 months---again, a very loose provision.

I really want to ask the Minister whether the Bill has been to a Cabinet committee; who other than the Minister had a hand in it; and whether it has been to the Government caucus. Was the Bill simply thrown together in the final hours of the Labour Government as a result of a weak Minister of Maori Affairs giving way to a few radicals in the city of Auckland? That is the issue at the heart of the matter. The Opposition, for reasons that have already been well canvassed, will oppose the Bill. It cannot proceed very far, but just to make sure that Maoridom knows and the people of Auckland know where the Opposition stands on the Bill, Opposition members will vote against the Bill at this stage.

JOHN BANKS (Whangarei): One has to ask oneself what members are doing, in the dying stages of this forty-second Parliament, in deciding whether the Bill should be introduced tonight. Not only is the Bill not necessary, it will have absolutely no opportunity to be passed.

Rt. Hon. Sir Robert Muldoon: What's the Government doing about that?

JOHN BANKS: I am OK, Rob.

Rt. Hon. Sir Robert Muldoon: I don't know about that.

[Interruption.] I would sooner have the member than the new Prime Minister.

JOHN BANKS: If the member for Christchurch North can become Prime Minister then there is hope for the member for Whangarei. I am saddened about the Orakei Bill because there is not a hope in Hades of its becoming law. I understand that constitutionally the matter just drops off the end of the Order Paper. It cannot proceed.

Judy Keall: Submissions will be called.

JOHN BANKS: There will be no select committee hearings, or, if there are to be select committee hearings, when will they be heard? They will not be heard; the Bill is a sham. Back in 1978 my friend the member for Tamaki dealt with the matter quite satisfactorily, did he not? He had the agreement of the people there. What is the House doing, some 12 years later, bringing such a silly little Bill into Parliament in the dying days of the fourth Labour Government?

The Bill is nothing more than a political sop. Why did the Government bring the Bill into the House at 5 minutes to 12? It is because most of the Maori people up there will be asleep and will not even know about it. The Minister of Maori Affairs---in his dying days in office; with the LTD, the big salary, and the games of golf four times a week---is on the way out. Opposition members want to know where the Bill goes from here. What section in the Bill deals with the money? Opposition members are very concerned about the Bill because it involves a prominent piece of land in New Zealand's major city, Auckland. It is now 12 years since the former Prime Minister, the member for Tamaki---in whose electorate the land is---

Hon. K. T. Wetere: And also that of the member for Northern Maori!

JOHN BANKS: It is also in the electorate of the Maori member for Tai Tokerau. Has he read the Bill? Why is the member responsible for the Bill and his cohort, the Maori member for Tai Tokerau, bringing the Bill into Parliament when there is absolutely no chance of its going through Parliament? The procedure is a manipulation of the forty-second Parliament in its dying days. The Bill means that the 1978 legislation must be repealed. This is a Claytons Bill; it is a sham; it is not necessary; it is going nowhere; and the Opposition will vote against it.

The House divided on the question, That the Orakei Bill be introduced.

Ayes 39

Austin	Goff	Neilson	Sutton, W.D.
Braybrooke	Gregory	Northey	Terris
Butcher	Jeffries	Prebble	Tirikatene-
Sullivan			
Caygill	Kelly	Robertson	Wetere
Clark	Kirk	Robinson	Wilde
Cullen	Mallard	Scott	Woollaston
Davies	Marshall, C.R.	Shirley	Young, T.J.
Duynhoven	Matthewson	Simpson	Tellers:
Elder	Maxwell, R.K.	Sutherland	Keall
Gerbic	Moyle	Sutton, J.R.	King

Noes 27

Banks	Falloon	McTigue	Upton
Birch	Gerard	Maxwell, R.F.H.	Wellington
Burdon	Gray	Muldoon	Williamson
Carter	Kidd	Munro	Young, V.S.
Cooper	Kyd	Peters	Tellers:
Creech	Lee	Richardson	Grant
East	McKinnon	Storey	McClay

Pairs

For:	Against:
Bassett	Angus
Moore	Gair
Palmer	Luxton
Rodger	McCully
Tapsell	McLean
Tennet	Marshall, D. W. A.
Wallbank	Meurant

Majority for: 12

Bill introduced and read a first time.

Sitting suspended from midnight to 9 a.m. (Wednesday).

TUESDAY, 4 SEPTEMBER 1990

(continued)

Orakei Bill

ORAKEI BILL

Referral to Maori Affairs Committee

Hon. K. T. WETERE (Minister of Maori Affairs): I move, That the Orakei Bill be referred to the Maori Affairs Committee for consideration.

Motion agreed to.

**26 Nov 1991, 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session, Hansard Vol 521, pp5571-5576**

**Orakei Bill** (Report of Maori Affairs Committee on Bill)

ORAKEI BILL

Report of Maori Affairs Committee

IAN PETERS (Tongariro): I am directed to present the report of the Maori Affairs Committee on the Orakei Bill. I move, That the report do lie upon the table. The Bill was introduced by the former Minister of Maori Affairs, the member for Western Maori, to the House of Representatives on 4 September 1990 and referred to the Maori Affairs Committee. The closing date for submissions was 20 April. The committee received and considered 10 written and 8 oral submissions---a total of 18. The committee met in Auckland to hear oral submissions on Wednesday, 10 July, and heard 5 hours, 15 minutes of oral evidence. The committee's consideration took 7 hours, 16 minutes. Officials from the Ministry of Maori Affairs and parliamentary counsel assisted the committee.

The Bill gives effect to parts of an agreement reached by the Crown and the Ngati Whatua of Orakei to implement with modification certain recommendations made by the Waitangi Tribunal in November 1987 in the report of the Waitangi Tribunal on the Orakei claim. The Bill also provides for the revesting of further portions of the Orakei block in the Ngati Whatua of Orakei Maori Trust Board and for the extension of the board's functions and powers. The Bill also sets aside other lands as reserves to be jointly administered by the Auckland City Council and the trust board. The Bill repeals the Orakei Block (Vesting and Use) Act 1978, which implemented an earlier agreement reached by the Crown and the representatives of the Orakei hapu of Ngati Whatua.

The Bill contains recommended amendments. Clause 4, in transferring amongst other things the marae land to the Ngati Whatua of Orakei Maori Trust Board in an inalienable estate, was the subject of many submissions. Twelve out of the 18 submissions supported the transference. Five submissioners opposed the transference. One submissioner opposed the transfer because he believed that historically the entire region known as Orakei is part of the Tainui boundary, not Ngati Whatua. Another submissioner believed that there would be a departure from the tradition of marae that had grown over the past 30 years. That submissioner also believed that the Ngati Whatua of Orakei Maori Trust Board had a very large work-load and should work in harmony with the Orakei Marae Reserve Trust Board. Another submissioner believed that the ownership of the land comprised in the land block had already been determined by past legislation and should be allowed to retain its present status. It was the five opposing submissioners who caused the extensive delay that confronted the select committee.

The House will recall that the 1978 settlement was to be a final and full settlement. The 1987 settlement as placed before the House by the Waitangi Tribunal would also claim to be a final and full settlement. The Maori Affairs Committee took hours to decide whether the Waitangi Tribunal was correct in placing the title that was under the Maori Trustee board under the control of the Ngati Whatua of Orakei.

During its duration the committee was divided in trying to decide whether there was a better way of bringing those two groups together. Finally, it was the committee's conclusion that we could not do with legislation what should have happened outside legislation. My personal view is that we have not heard the last of a claim by the Ngati Whatua of Orakei. As one goes back through the history of Parliament one would be staggered to learn that the flooding on the original marae was not caused by Maori or by nature but was a direct intervention of Parliament through legislation. I refer to the placement of the water line, which caused the flooding that led eventually to the burning down of the old homes on the waterfront.

It would have been my wish, if the committee had had more time, to extend the powers of the Waitangi Tribunal and for that land also to

be part of this claim and be given back. Today I share with the House my concern that in placing the Bill before the House---and, no doubt, into legislation---we have not concluded a final and complete settlement for the Ngati Whatua of Orakei. We place the Bill before the House with the support of the Maori Affairs Committee.

Dr BRUCE GREGORY (Northern Maori): Ki te Kaikorero o te Whare, tena koe; ki te Heamana o te Komiti Maori, tena koe; e te Whare, tena koutou katoa.

[Subsequent authorised translation: Greetings to you, Speaker of the House; greetings to you, the chairman of the Maori Affairs Committee; to the whole House, greetings to you all.]

Chairman of the Maori Affairs Committee, members of the committee, and members of this House, the time has come to report back the Bill that was introduced by the former Labour Minister of Maori Affairs in September 1990. As a result of that introduction, the incoming National Government and its Minister of Maori Affairs said that the Bill would be referred to the select committee for further deliberation and possible changes. It is interesting that we have now gone almost the complete circle, with only one or two subtle changes.

One matter that arose was who was responsible for saying that the Bill would return to the House basically unchanged. The Minister of Justice publicly stated that. The House was in a bit of a quandary at the time about who was responsible for the Bill, and the Minister of Justice saw fit to say publicly that the Bill should return ``as is'' to the House. That indicates to the House the degree of confusion, and the problems that beset the committee when the Bill came back for further submissions---of which there were a few.

Although one could not say that 18 submissions were a significant number, they did indicate that the Bill as introduced under the Labour Government was essentially what the people of Ngati Whatua desired. However, it was obvious on the return of the Bill to the select committee---and during the sitting of the committee in Auckland, when the concerns, deliberations, and views of the Ngati Whatua people were heard---that there were still some divisions.

The committee genuinely and sincerely attempted to right the differences among the Ngati Whatua people, and, even at this stage---certainly as one of the members---I am still not entirely happy in my mind that we achieved that objective. However, be that as it may, the compromise is the best that could be arrived at. The issue that created the biggest concern amongst the Ngati Whatua people, and in the committee's attempts to deliberate on the Bill, was the relationship between the people who ran the marae---the national marae of Orakei and its wharenui, the Tumutumuhenua---and others of the Ngati Whatua who were in some cases also members of the Ngati Whatua of Orakei Maori Trust Board. We deliberated and discussed, went back, and still got confusing messages about the intent of Ngati Whatua. I hope that the Bill that has been brought back to the House has gone a long way towards addressing that issue.

Basically, the issue was one of whakapapa genealogy, which determined whether the kaitiaki or guardianship of the marae should rest in the Ngati Whatua of Orakei Maori Trust Board, or whether it should reside in the members who have been responsible for a good deal of the work that surrounded the marae itself---the construction of the buildings, the construction of the educational facility that is adjacent to the establishment---and obviously came down through a genealogical descent to Apitai te Kawau, or whether it should go back to a further tupuna, namely Tuperiri. The Bill indicates quite specifically the tupuna or the ancestor through which this exercise would evolve.

That is the situation that faced the select committee. We searched our souls and went back to the people because this is an issue that

they should resolve themselves; it is not an issue that we should resolve as a select committee---we could have done so, but consistent with Maori kaupapa we felt that this was an issue for the tribe to resolve.

It was interesting to hear the chairman of the select committee say that some submissions stated that iwi outside Ngati Whatua also felt that they have a stake in this issue. No doubt the veracity of the ownership titles to that area of land will be a matter for discussion in the future.

The Bill is obviously an attempt to address the injustices that were done to the Ngati Whatua people, the history of whom I am sure most of us are familiar with, and have sympathy for. I can assure the House that even though it may appear on paper that the marae no longer exists, it does within the psyche and the minds of the Maori people of that area---certainly of the Ngati Whatua people---and I am sure that one day that place will once more come to life. I am referring to the marae and to the buildings that were burnt down some time ago. The people were almost forcibly shifted from the location of Okahu Bay, and were given the opportunity to establish a new marae on top of the hill. They were also given the opportunity to build homes in that vicinity.

The Labour Government saw fit in this Bill to address some of the inconsistencies and injustices that have applied to the Ngati Whatua people, and went part way to resolving those issues. For example, it allocated \$3 million to address the housing problem. It gave back to the control of Ngati Whatua an area of land greater in extent to that covered by the 1978 Act. These are things that the Labour Government did while in power, and, in essence, this Bill continues that exercise. I have no doubt that the member for Tamaki will not be very happy with the direction, but it is what the select committee decided to do. I believe that it is a step in the right direction.

If members compare the present Bill with the Bill introduced by the member for Western Maori when he was Minister of Maori Affairs, they will notice a subtle change---for example, with respect to the Waitangi Tribunal. When the former Minister of Maori Affairs, the member for Western Maori, introduced the Bill, he said that it would implement the recommendations made by the Waitangi Tribunal in its report on the Orakei claim and the numbers quoted. The current introduction refers to parts of the recommendations of the Waitangi Tribunal.

JOY McLAUHLAN (Western Hutt): I support the reporting back of the Orakei Bill, and, as previously said in the House, the majority of the submissions supported most of the Bill as it was introduced just before the general election in September 1990. There are several amendments of a more technical nature; some cause little or no controversy, and most will probably go through the House without comment---and, indeed, others will be discussed further before they are passed.

I should like to concentrate on clause 4, which was the one that caused the extreme delay in the reporting back of the Bill. That clause did cause the members of the select committee a tremendous amount of anguish---a word that I think is perhaps not too lightly used in this case---as we considered and deliberated on what we were doing as we brought, through this legislation, the control of the Ngati Whatua of Orakei marae under the control of the Ngati Whatua of Orakei Maori Trust Board.

The marae was set up in 1954. It has gone through a very large growing period, united with the support of a lot of groups around Auckland to become, perhaps, a more pan-Maori marae. What we are essentially saying in this Bill, with the full force of the recommendations of the Waitangi Tribunal behind it, is that the marae

will be returned to Ngati Whatua.

While the select committee considered this, there was debate on whether a new marae could be built down where the old marae had been---down near the urupa. Perhaps that would be a method of appeasing both sides. However, ultimately, as we talked through the issues, as we looked at the whakapapa, we tried to decide who had ultimate right to what parts of the land; and then we were told that when it came to whakapapa, or genealogy, perhaps only 1 percent of Maoridom understood it anyway---I totally agreed that there was not a lot of hope for me to understand, but I did try. Ultimately, we decided as a select committee that we could not resolve something that is essentially an internal matter that needs to be resolved by the various people---perhaps one could say the various factions of Ngati Whatua. They have to resolve who is responsible for the marae within the confines of the Bill.

The Bill was drafted on the recommendations of the Waitangi Tribunal. There is not a great deal of change from those recommendations, and, in fact, some of the recommendations that were made in respect of the Orakei block have already been implemented. The Bill gives implementation to the remainder of the recommendations.

The decision to report the Bill back largely unchanged, except for a few technical matters, will not appeal to everybody involved. It probably will not appeal to the local member of Parliament, the member for Tamaki, but it now has the support of the local Maori member, the member for Northern Maori. The select committee finally concluded that the Bill should stand largely as it was initially written. The committee decided that with full cognisance that the decision will not make everybody happy.

Due recognition should be given to the tremendous amount of work that has been put into the Ngati Whatua marae by the marae trust board since 1954. The board has built up an education centre and has done a tremendous amount of very worthwhile work. The work of the marae has contributed hugely to the youth of Ngati Whatua. There is no way that we can dismiss lightly either that work or the people involved.

I record in the House the very important role that the women of that marae, in particular, have played as they have turned Ngati Whatua into a force to be reckoned with in Maoridom. I support the work that they have done, and I give them full recognition for that at this time. I support the reporting back of the Orakei Bill, which stands much as it did in the original Bill---and no doubt there will be further debate on the various issues involved.

Hon. K. T. WETERE (Western Maori): I support the reporting back of the Bill. I want to record the submissions made by those people who came before the select committee to give their advice and show their knowledge about the Orakei issue. We have the best of both worlds here. The provisions of the 1978 Act, except for the section dealing with the \$200,000, have been transferred across to this legislation, which validates the transfer of \$3 million to the trust board.

Members should be aware that the Bill caters for the older or existing trust board, and also for a new trust board. It takes up land that has been extended or added to the existing Act. The Bill refers to it as the ``former Act''. All of the land in Okahu Bay, as well as that around Savage Memorial and that area of land that the previous speaker referred to, which was to have been set aside for housing purposes, is now to be included in the Orakei block.

I will now refer to some more of the domestic concerns raised by people such as Ani Pihema, Ruby Gray, and others, because it is time to recognise the submissions and representations they made to the committee. Their submissions go back further than the issue that was



before the committee. Some reference was made to that by way of submission to people such as the late Harry Dansey, Matiu Tehou, and many members of the Auckland City Council who are now deceased. The late Sir Dove-Myer Robinson, a former mayor of Auckland, supported the establishment of the marae. It is for that reason that Ani Pihema and others suggested to the committee that that committee stay in place.

It is fair to say that the select committee, while supportive of the submissions generally, was not able to take on board the domestic nature of such ideas and have them written into the Bill. The best way for that to be done was to provide for the continuance of the Ngati Whatua of Orakei Maori Trust Board under its new name. The only difference in the name is the change from ``of'' to ``o'', which is the same in Maori and English anyway. That is the only difference, but it provides for the existence of that board---and maybe one could refer to it as being Maori ihi or mana that is being preserved within the sanctum of the board to allow it to carry on its functions as we understand them. Part II of the Bill takes across all those provisions---none is lost.

Part III adds to the Bill the land that I referred to earlier. That is now complete. I recall that when the 1978 Act went through the House the question of tupuna and the ancestor of the Ngati Whatua was dealt with. On the one hand Ruby Gray, who happens to be a descendant of Apihai Te Kawau, said in a recent letter to the chairman of the committee that we might consider whether her tupuna could be regarded as the tupuna or common ancestor in the Bill. We have taken the 1978 translation and put Tuperiri in the Bill so that none of Ngati Whatua of Orakei then miss out as a result of a common ancestor being put in. Otherwise, people such as Joe Hawke, Professor Hugh Kawharu, and so on, would have been missed out of the whakapapa altogether. I believe that the committee has done its level best to try to bring the two Bills together.

TONY RYALL (East Cape): I support the reporting back of the Bill. Clause 4 is the most controversial clause in the Bill. I know that both sides of the Maori Affairs Committee agonised and experienced some anguish about the direction in which they would go on clause 4. I know that during the introduction of the Bill, which was just before the previous Parliament finished, many members spoke against it, but that was more to do with the timing of the introduction than with anything else. Many people were concerned that the Bill would take responsibility away from the marae committee. We have heard today that the Orakei marae was more than a local marae; in many ways it played its own role nationally. I do not think that the Bill should take anything away from the great effort that the people of the marae committee have put in over the years. The Bill does not necessarily undermine that, but, as has been asked in the House, how can one legislate for the responsibility of people and something as important as marae?

The committee has probably taken the right judgment on the balance of information and recommendations in terms of transferring the marae land to the Ngati Whatua o Orakei Maori Trust Board in an inalienable estate. Many people are concerned that the reporting back covers a number of issues that they thought had already been resolved. Many people thought that the 1978 agreement had resolved the very contentious issue relating to Orakei land. Maybe it is a signal that many issues being resolved now will be rehashed at a later time. It is of concern to a number of people that agreements made now may not necessarily stand in 10, 15, or even 20 years' time. In essence, the committee thought this through very well. I have to admit that I can think of one Government member who may not be very happy with the status of the report---

Hon. Warren Cooper: Who?

TONY RYALL: I think that the member should know who. The select committee has done a very good job on a very difficult issue. My experience as a new member of that committee is that many of the issues surrounding whanau and hapu relationships are complex. I think that most people will be pleased, although I know that one submissioner put forward a most interesting point of view that the entire Orakei region is in fact part of Tainui land and that it should be the Tainui people who actually get it. However, that is the kind of thing that one always experiences in issues of this kind. I compliment the chairman of the select committee on the very good way in which he handled the running of the committee. Although some people will be upset, the select committee acted in a relatively caring way and listened before making the decisions it made.

Hon. PETER TAPSELL (Eastern Maori): I was not present at the select committee and I have the disadvantage of not having heard the oral submissions, but perhaps I have the advantage of being remote from the committee and therefore have the advantage of a greater objectivity. The Bill repeals the Orakei Block (Vesting and Use) Act 1978. Out of fairness it ought to be said that that 1978 Act was the result of an agreement unanimously entered into by the Prime Minister of that time, the member for Tamaki, and persons who purported to represent Ngati Whatua at that time. It was not imposed on Ngati Whatua, and that ought to be said in fairness to the member for Tamaki. However, it is clear from submissions from Ngati Whatua and the Waitangi Tribunal that the agreement was manifestly inadequate and manifestly unjust. The Waitangi Tribunal has set out in detail for those who choose to read it a series of injustices to Ngati Whatua over many years. I think that we all hope that the new arrangement will be fairer and of longer standing.

The Bill shows the advantages of having an independent body to carry out the initial investigation in major issues involving Maori land. I know that the former Minister of Maori Affairs felt that it might be better if there were direct negotiations between the Government and the people. The Bill is an example that shows that that is probably not the case; that it is ideal that a non-interested body should carry out the initial investigation. The second point I want to make is the creation of papakainga, an excellent concept that provides for persons to own and occupy houses on land that is not subdivided--the object, of course, being to avoid subdivisional costs. Experience has shown that there are certain disadvantages in that, the major disadvantage being that those persons who own the homes, should they later obtain better positions elsewhere and want to shift, are not in a position to sell the homes and acquire the equity they have built up.

In my view, that legislation ought to be changed in order to provide for some trust or body that will own the land and will buy and sell houses from those who come and go. That will become clearer in future. The last point I want to comment on is the creation of the new trust board. The Bill brings home the urgent need to consolidate and remodel trust board legislation. There are about 16 Maori trusts, all with separate legislation, and in none of those does the legislation provide for the boards to keep their beneficiaries properly informed. In none of those Acts is there clearly set out the aims and objectives that the board ought to choose to follow. Throughout the country many of the boards have become almost inconsequential. That legislation needs consolidation and major review.

SONJA DAVIES (Pencarrow): As a member of the committee, I should like to make some comments about the Bill. I am pleased that it has been returned to the House, because I know that there is a good deal

of concern on the part of the people who are involved. In fact, I know that one of them has recently gone to Geneva to debate this legislation and to hope that it will be speedily resolved. It is a very important issue for the people of Auckland generally, but also particularly for Maori, for Ngati Whatua, and for the women who have been involved over the years in fund-raising to rebuild the marae and to run the education services that are part and parcel of the daily life of that marae for whom all members of the committee had some real concern. It was not possible to put into legislation any specific provisions for those women who really want to continue with that work, and we hope that there will be a drawing together of the people so that that can actually happen. Good work is being done there, and it is badly needed.

If any member does not agree with the Bill, he or she should read the report of the Waitangi Tribunal. It is an extremely interesting document. Committee members went to Auckland to meet the Ngati Whatua people---all the people who were involved, such as Hugh Kawharu and Joe Hawke, and the women---and we were very impressed with the quality of the submissions made that day. The day was an extremely worthwhile one, but in the final analysis the Bill has to be one that will last. I know that it has been said by my colleague that it is time that Parliament looked at the whole question of trusts and their future, and that probably within 15 years we will be doing that.

The land involved is prime land in Auckland and it belongs to the tangata whenua. I, for one, will be extremely pleased if we can jointly resolve this question and can give those people what they consider to be their right. The history of the issue is one of bitterness and violence, and I should like to feel that we are a long way further ahead than we were and that such things could not happen again. I am very pleased to stand here today and to say as part of the committee that I feel that we are doing something that should have happened a considerable time ago, and I hope that the land will be used productively for the people and for the culture of the Ngati Whatua and all people. I hope that the people of Auckland will identify with that marae.

One thing that worries me is that people raise money for a marae then think it has nothing to do with us out here, when in fact Maori people want pakeha and other people to come and be part of the marae. I hope that there will be no opposition to the Bill. The Labour Government introduced it at the end of its term of office. The committee has laboured mightily over it. In fact, committee members agonised over it. I am not 100 percent happy about some things, but I am glad that it has come back. I am glad that it will be dealt with because it is a running sore as long as it is not dealt with. People believe that it is the right of the Ngati Whatua people to have that parcel of land.

Motion agreed to.

**28 Nov 1991, 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session, Hansard Vol 521, pp5752-5757**

**Orakei Bill** (Second Reading)

ORAKEI BILL

Second Reading

Hon. DOUG KIDD (Minister of Maori Affairs): I move, That this Bill be now read a second time. In so moving, I wish to say that it is very important in discussing the Bill to remember why it is before the House. The Bill is for the people of Orakei, today known as Ngati Whatua o Orakei. They are a distinctive grouping of the people known

as Ngati Whatua who occupy the lands in the general area from Tamaki to Dargaville. They are all the descendants of the ancestor Tuperiri, a grandfather of Apihai Te Kawau, who in 1940 was acknowledged by all Tamaki Maori as having been their paramount chief. They represent the ancient peoples of Tamaki, namely Te Taou, Ngaohu, and Te Uri Ngutu.

The sorry history of Ngati Whatua o Orakei is fully set out in the 1987 report of the Waitangi Tribunal on the Orakei claim. That report makes sober reading, relating as it does to the erosion over the years since the 1840s---when the Governor was invited to establish himself in what is now Auckland---of the mana of Ngati Whatua o Orakei, principally through the steady dispossession of that iwi of its lands by diverse means.

Not all of this is ancient history. Much of this awful saga has happened in the time of people still alive. The dispossession of Ngati Whatua was finally complete only in 1952. I was reminded this evening of that date by my colleague the member for Remuera, who said that the clearance of them from that land was effected in time so that Her Majesty the Queen could drive undisturbed along Tamaki Drive without seeing the descendants of those who had signed the Treaty of Waitangi with her great-great-grandmother. I commend the 1987 report to all honourable members, particularly those who have come into the House since that report, and recommend that they read it. It is a sorry tale, as I have said, but it is important for all New Zealanders to come to terms with it.

The Bill makes specific provision to ensure that Ngati Whatua have a place in Auckland that is theirs and that will remain theirs. In doing so, it goes further than the Orakei Block (Vesting and Use) Act 1978. The 1978 Act had as its purpose the implementation of an agreement between the Crown and representatives of the three Ngati Whatua hapu mentioned for the vesting, use, and management of certain portions of the Orakei block situated in Auckland.

That Act constituted the Ngati Whatua of Orakei Maori Trust Board, which in this Bill is now called the Ngati Whatua o Orakei Maori Trust Board. Secondly, it provided for the determination of the beneficiaries of the board, through the board's compiling a list of those descendants of the common ancestor Tuperiri who were living and who had attained full age. Thirdly, it vested certain lands in the board for housing purposes, for open space and recreational purposes, and for the purpose of addition to and inclusion in the Orakei Maori reservation, being land reserved as a church site for the common use of Maori in and around Orakei, and for the purposes of a burial ground for the former owners of the Orakei No. 1 reserve block and their descendants.

The present marae site was set apart as a reserve for the use and benefit of Maori, subject to the Reserves Act 1977. Other land was set apart as a reserve to be administered by the Auckland City Council; vested in the Housing Corporation for housing purposes; and set aside as a local purpose community health reserve. The 1978 settlement was, however, limited to some of the land taken from Ngati Whatua under the Public Works Act that had not been used by the Crown for the purpose for which it was taken.

Having considered the claim filed in 1984 and reformulated in 1986 after the 1985 amendment to the Treaty of Waitangi Act 1975, which allowed claims to the tribunal to extend back to 1840, the tribunal made a series of recommendations, the overall effect of which was to provide for what the tribunal described as ``the proper restoration of the tribe's status in Auckland's affairs.''. The Waitangi Tribunal stated that, while the Crown's action in 1978 was consistent with the principles of the Treaty of Waitangi, it was inconsistent with the treaty that reparation was not provided in respect of a wider range of grievances, and was limited to two blocks of land taken under the

Public Works Act.

It was clear, in the light of those recommendations, that the 1978 Act could not be considered to be an adequate solution to the Orakei block situation. Another settlement with Ngati Whatua was needed in order to provide an appropriate resolution for both Ngati Whatua and the Crown. The Bill considers those matters in the recommendations that need legislation in order to give them effect.

The most important of those recommendations was that the marae be vested in the Ngati Whatua o Orakei Maori Trust Board. The marae buildings were funded in part by the community of Auckland, and are at present administered by a body known as the Orakei Marae Trustees. This body comprises representatives from a range of organisations, such as the Rotary Club of Auckland, the Auckland City Council, the Okahu Bay Progressive Association, the Waitemata Tribal Executive, Maori people of Okahu Bay, and, through the membership of the four Maori members of Parliament, the Maori people of New Zealand.

The issue of which body should be responsible for the marae was one of the key matters raised in the submissions on the Bill. On the one hand there was support for the Orakei Marae Trustees to continue to be responsible for the marae. On the other hand a strong plea was made to the select committee that clause 4 of the Bill, which vests inter alia the marae land as part of the hapu land in the Ngati Whatua o Orakei Maori Trust Board in perpetuity as an estate in fee simple, not be amended.

A marae is a place where matters are ordered on Maori terms, and a marae at this locality could be ordered on no other terms than those of Ngati Whatua o Orakei. Ngati Whatua o Orakei have no other marae since they were removed forcibly and against their will from Okahu Bay below. The marae is the repository of their kawa, history, legends, art, and culture. It illustrates a customary predilection for belonging, as distinct from owning. The House is usually named after an ancestor.

Clause 4 is in accordance with the recommendations of the Waitangi Tribunal. When one considers the history of the importance of the Orakei land to Ngati Whatua, and, in particular, the cultural necessity for them to have their own marae---having been expelled from their original marae at the bottom of what is now Okahu Park---it becomes impossible to leave the marae with the Orakei Marae Trustees. The heart of the Bill is that the marae land be transferred to the Ngati Whatua o Orakei Maori Trust Board. Without their own marae, Ngati Whatua o Orakei would remain a singular oddity amongst Maori. Clause 4 means that Ngati Whatua o Orakei will be able to treat all visitors and to treat the city of Auckland in a way befitting of them as the relatives of that great protector of the Crown and settlers, Apihai Te Kawau.

The Ngati Whatua of Orakei Maori Trust Board is fully aware of the contribution made over the years by the Orakei Marae Trustees in relation to the development of the marae site. This valuable contribution was specifically commented on by the Waitangi Tribunal. While the Bill vests the marae land in the trust board, it has been stated that the day to day running of the facilities on the marae will be dealt with by committees of the trust board, thus allowing those who have had an involvement to date to have a continuing involvement in the management of the marae. I am sure that that will provide an appropriate means for resolving an issue that essentially is one for Ngati Whatua to deal with, not for Parliament.

Other changes to the 1978 Act are included in the Bill. These include the establishment under clause 20 of the Bill of the Ngati Whatua o Orakei Reserves Board to be the administering body to control and manage the whenua rangatira as a recreation reserve. The whenua rangatira comprises a much larger area of land than that

covered by the 1978 Act. The reserves board is to include members from both the Ngati Whatua o Orakei Maori Trust Board and the Auckland City Council. Clause 18 provides that the whenua rangatira is to have such name as the trust board considers appropriate. The partnership between the city council and the trust board in relation to the administration of these reserves is important to both parties.

The trust board is given extended powers in relation to the management of the lands vested in the board, but the Bill also ensures the protection of such lands by imposing in clause 15 certain restrictions on the disposal of those lands. This Bill is important for Ngati Whatua o Orakei. It is also an important Bill for Maori because its enactment will be a sign for all Maori that the Government is prepared to take the necessary steps to resolve treaty grievances. I urge all members to support the second reading of this important Bill.

Dr BRUCE GREGORY (Northern Maori): I thank the Minister for his words, knowing full well that he has had to do some quick learning to familiarise himself with the issues that emanate from this important Bill. At the beginning of this second reading it strikes me that there are some unusual features about the passage of this Bill. I should like to share them because the Minister in his dissertation also made reference to the fact that in 1952 certain things happened to the marae in Okahu Bay for reasons that he became familiar with only as a result of some words that were passed to him by the Minister of Justice.

I note first that since the introduction of this Bill there have been three Ministers of Maori Affairs. That is interesting. I do not know whether there is a precedent for that. The Bill was introduced under the previous Government by the Minister of Maori Affairs of the time, the member for Western Maori. After the change in Government the member for Tauranga as Minister of Maori Affairs brought the Bill back to the select committee for further discussion. Since then he has been superseded by the present Minister of Maori Affairs.

The second point that I want to bring to the attention of the House is that two whare hui have been burnt down. As I am a typical Maori, that conjures up all kinds of thoughts about whether there have been things that should not have happened, for whatever reason, and that those burnings are signs of these things revisiting us. Those are the two points that I have thought of. It was not so long ago that we were sad to learn that the marae sited on the hill had been burnt down---as a result, I suspect, of a failure adequately to carry out some responsibilities pertaining to some of the equipment in that building. I do not think that it was an intentional act, but, rather, the result of some of the practices that our people carry out from time to time on marae. Those are sad thoughts rather than happy ones, but none the less I believe that they help us to think and to strengthen our resolve in relation to the issues that face us as a young nation. Those signs constantly come to our minds and I believe that they will be passed on.

I keep coming back to the marae, which, probably not untypically, is sited on a beautiful spot in Auckland. It looks down on Te Moana Nui A Kiwa and on Rangitoto Island. Strangely enough, I understand that that island received its name not from Ngati Whatua but from Tama-te-Kapua when his canoe went up that part of the waters. He named the island. There is a story behind that island, as well. I do not want to get too involved in history except to say that the area has a diverse history of occupation. The area of Tamaki Makaurau from Te Kawerau through even part of Ngapuhi to Waikato has a fascinating Maori history. Sometimes that history is a little confusing if one is not familiar with it in depth.

However, the position has arisen as a result of attempts by

various Governments at various times to seek to redress and to put right some of the wrongs that have been the lot of Ngati Whatua in recent times. The Ngati Whatua tribe was unfairly dispossessed of much of its land, and it behoves us as a diverse people to rectify those injustices and to see Ngati Whatua once more in the position that their tupuna were proud to hold. Those tupuna held their heads high and are still looked up to by the present-day remnants of that tribe. It is more than a remnant---it is gaining its strength and finding its feet. These lands are more than symbols; they are signposts where Ngati Whatua can gather and argue and deliberate. I suppose that recent history would indicate that that has already taken place in part.

The essence of the Bill is largely the result of the previous Government that, as a result of the research, the discussions, and the hui associated with the Waitangi Tribunal, sought solutions and facts that would guide us towards finding a just solution to the question of Orakei and Ngati Whatua. The result is this Bill, which was introduced by the previous Government. It was considered by the present Government to have been a bit rushed, and that was the reason that it felt that the Bill should be returned for submissions and for a final result. I can happily say that the Bill as introduced has in large part remained intact. There have been one or two minor changes, but the substance of the Bill introduced by the previous Government has been carried through with little difficulty.

When the select committee visited Auckland---Tamaki Makaurau---and heard the deliberations of Ngati Whatua two points were highlighted. The first point was that there was no doubt that most people of Ngati Whatua descent were desirous of bringing the whole of Ngati Whatua together. That point was not lost to most of us. The second point was that, as a result of some of the activities that had taken place on the Orakei marae that were tied in with concepts such as, for example, ahi kaa, the people who had occupied and looked after that particular area of Ngati Whatua felt that there was a need for some form of recognition.

I know that in Maori terms that is not something that one tends to push for; one hopes that it will come about and be bestowed upon one---and I am sure that history will do that. None the less, the position arose essentially out of the same tupuna, and I just want to touch on that matter. I know that the question of whakapapa---genealogy---is something that Maori treat with respect at appropriate times and on appropriate occasions. It is important here because it was one of the issues that created a degree of division. I am not sure that we have resolved that division, and I am not sure that it is our place to resolve it. Having put the Bill in place and having had the opportunity to discuss it, I hope that Ngati Whatua in the main will be able to resolve that position in ways that are appropriate and best left to them.

So, one branch of the family, if I may put it that way, of the tupuna, Apihai Te Kawau, wished the Orakei marae to remain in its care on the basis that those people had implemented a lot of the work, a lot of the activity, and the developments that had taken place on the current site. They wished to be recognised by the continuation of their activities. The people concerned were Ruby Gray and Ani Pihema. Those two women have ranked high in activity in relation to the marae. Certainly, one can only admire the activities that they have carried through, and I want that to be recorded in this debate.

Those two individuals, like probably most of the other Ngati Whatua in Auckland, are descendants of that particular tupuna Apihai Te Kawau. However, there are others who do not quite make that link, but who, in fact, are connected to Ngati Whatua through the

grandfather of Apihai Te Kawau---namely, Tuperiri. Through him many other sectors of Ngati Whatua also claim a genealogical connection to the land. That is the position of Ngati Whatua at present. As a result of the Bill and of what has been said and deliberated on at the many hui that we have had, I hope that their children and their grandchildren will come to practise the concept of kotahitanga and be able to carry through the activities of their tupuna in harmony. I am sure that that will occur.

It may appear to the House that I have dwelt over-long on the history and whakapapa of Ngati Whatua. I have done that on purpose, although I am not an expert in that matter. However, the House, in dealing with issues of this nature, needs to recognise particular aspects of the way that Maori think, the way that they communicate, and the way that they understand such issues. In relation to issues that touch on Maori matters, the Maori audience---or those Maori who are beyond the reaches of this institution---should have the opportunity to be able to understand, interpret, visualise, and acknowledge proceedings and to speak about them in a way that is familiar to them as a people and that will give them pride once more in the issues that relate to them. So that is one of the reasons that I have done that. Of course, I also have a personal interest in that aspect.

The Minister has accurately and succinctly outlined the substance of the Bill, and I think that, apart from making a comment where appropriate, that will be well recognised by most of the people who are listening to the debate. The Waitangi Tribunal spent a considerable amount of time on land issues that relate to the Ngati Whatua people. I think that the tribunal had some difficulties but I will not enter into that particular matter except to say that that matter took the tribunal a while.

The fourth Labour Government attempted to formulate the results in legislation to rectify that position, which has long been a matter that Ngati Whatua people have felt quite strongly about. So attempts to implement the substance of the report by the Waitangi Tribunal were started by the previous Government. For example, it dealt with the matter of compensation, and it made a housing programme available to Ngati Whatua. I understand that that programme was in the order of \$3 million. It was the beginning. The previous Government also looked at the question of the Orakei Block (Vesting and Use) Act.

For the edification of the House, I do not think that the present Bill deals solely with the lands that were covered by the previous legislation. I know that, during previous discussions on the matter, the member for Tamaki continued to argue that the previous National Government had resolved the issue of Orakei and of Ngati Whatua when he was Prime Minister, and that this Bill was unnecessary. The main distinctions between what he did in his time and issues that the previous Government attempted to resolve were that the extent of the land under discussion had increased and that the Waitangi Tribunal had made an impartial investigation and had come down with recommendations that the previous Government attempted to address in the Bill that was introduced in 1990. That Bill covered matters beyond the parameters of issues that the member for Tamaki as Prime Minister had seen fit to resolve with the Ngati Whatua people. This Bill covers a much greater area than the legislation that was enacted under the previous National Government during the prime ministership of the member for Tamaki. I think that that is an important distinction. So this Bill addresses issues that relate to the Waitangi Tribunal. It covers a much larger area of land, and it has attempted to bring together the Ngati Whatua people, the nui tonu or wider family of Ngati Whatua, and to involve them in that important land area and that important marae.



I listened to the Minister's speech. I think that the point needs to be made that to the Maori mind the marae in Okahu Bay still exists. All that people who go there see is a church site and a large area of land that almost has been made into a park. I am sure that---and this is not a prophecy---the time will come when that marae will appear once more on that site or in its vicinity to fulfil the way that Maori feel about the whole question of their history and of their tupuna. While it does not exist in reality at the moment, in the minds of the descendants and the kuia and kaumatua of Ngati Whatua that land is still the marae of Ngati Whatua. The present Orakei marae, which in a sense has been an attempt to address the grievances of Ngati Whatua, is a new marae. It has already been demolished once and rebuilt, and it embraces in essence a wider family because it includes not only Maori but also representatives of non-Maori institutions in the area.

JOY McLAUCHLAN (Western Hutt): I am pleased to support the second reading of this Bill. After spending a great deal of time on the Bill in the select committee I feel I know the problems and the good parts of the Bill very intimately. One can ask what the Bill does. It acts on the recommendation of the Waitangi Tribunal to provide recognition of the rights secured to Ngati Whatua o Orakei by the Treaty of Waitangi in relation to the Orakei block. As has been mentioned previously, there is a great deal of history associated with this issue. The Minister of Maori Affairs suggested that all members should read the report of the Waitangi Tribunal on the history of the Orakei block; perhaps there would then be a far greater understanding of why it is necessary to implement the Bill at this time. Many people believe that the 1978 settlement was the full and final settlement, and indeed the Act said so. However, the incoming 1984 Labour Government in its wisdom determined that claims could be made relating to land and alienation grievances that had occurred before 1975.

The Ngati Whatua have been on the central Auckland lands for a long time. The person to whom we are referring tonight as being the tupuna of Ngati Whatua---Apihai Te Kawau---is generally recognised as being the chieftain of the area at the time that Governor Hobson was invited down to Auckland to establish the capital of New Zealand. This move was made to protect both sides. It was intended to stop the warring Maori from trying to obliterate any European settlers and it also gave certain tribes some protection against the superior European musket power. So there was a certain amount of symbiosis when Apihai Te Kawau invited Governor Hobson to Auckland.

One of the problems associated with the Bill was that certain members of Ngati Whatua were descended from Apihai Te Kawau's grandfather Tuperiri. Therefore the committee had to decide who had a right to the Orakei block that Ngati Whatua consider they own. A considerable amount of debate took place in the committee as to who precisely Ngati Whatua o Orakei are. We then had an interesting observation that the side of the iwi descended from Tuperiri but not from Apihai Te Kawau had a connection back to Apihai Te Kawau through a younger brother.

This problem resulted in a great deal of indecision, and in some ways made me, as a non-Maori on the committee, realise the difficulties that an institution such as Parliament has in trying to settle claims that do not necessarily have a European background or history. It is important that when we decide how much influence the Waitangi Tribunal should have on legislation in the House we realise that the tribunal always looks to Maori history. I think that we have to consider that and to say that, while the Orakei Bill is based on the recommendations of the Waitangi Tribunal, in this instance that recommendation is right and proper. I am pleased to be part of a

Government that is working extremely hard and is very serious about resolving issues connected with longstanding land alienation grievances.

The Orakei Bill was introduced by the Labour Government before the election. The member for Northern Maori said that it has gone through the House under three Ministers of Maori Affairs. Another Bill that will be introduced before Christmas or shortly afterwards will have had the same parentage, so this Bill is not totally unusual. The incoming National Government determined that the Bill would proceed. We had a great deal of discussion and immediately ran into difficulties over where the select committee hearings should be held. That was when we first realised that there would be a great deal of controversy, particularly over clause 4. There were those who wanted the committee to meet on the marae---or in the administration building because there had recently been a tragic fire; there were those who said that we should stay well away from Orakei and meet in Wellington; and there were others who said that we should meet in Auckland but off the marae. We eventually opted for the third choice, but of course a compromise does not please anybody.

There was a great deal of discussion on who should have control of the marae. That is the basis of clause 4 and is the reason that the Bill was held up for so long at the committee. It was finally agreed that there was no way that the legislation could resolve conflicts of personality and internal domestic conflicts. The work of the Orakei Marae Trustees and the Orakei Marae Centre for Education and Cultural Exchange was acknowledged by both the tribunal and the Ngati Whatua of Orakei Maori Trust Board. There is no argument about the wonderful work that the people have done with the marae and the educational centre since 1954. However, the issue is not good deeds but whether Ngati Whatua are to control the marae. That, in essence, is the primary recommendation of the Waitangi Tribunal---that the marae should be returned to the control of Ngati Whatua.

Professor Kawharu in his oral submission to the committee said that once the title to the marae was returned to the Ngati Whatua o Orakei Maori Trust Board a committee would be set up to attend to the day to day activities of the marae. I hope that that is what happens and that the people who for so long have had the control and the guidance and the development of the marae and the educational centre are able to continue. It was certainly the view of the officials and of the Waitangi Tribunal that the Orakei Marae Trustees should not be allowed to continue to control the marae, because the trustees as a whole do not represent Ngati Whatua---only 4 of the 16 trustees are Ngati Whatua and the others are representatives of organisations in Auckland City.

We believe that, in reporting back the Bill as it stands but with a few technical amendments, we are doing the right thing. However, in saying that I take some humour from a submission made yesterday to the Maori Affairs Committee. The life of the Maori Trustee and the amount of legislation that has applied to that office in previous years were being discussed. The historian who has recently completed a book on the Maori Trustee said that all those things were done in good faith because they seemed---as she said in her inimitable English accent---to be a jolly good idea at the time. I should like to think that the Bill as it has been reported back is the final and complete conclusion to the saga of the Orakei block.

The House adjourned at 10.30 p.m.

ORAKEI BILL  
Second Reading

Debate resumed from 28 November.

Hon. K. T. WETERE (Western Maori): In supporting the second reading of the Bill I go back to the first statement I made when introducing it on 4 September 1990. I had this to say: ``The Orakei claim was filed with the Waitangi Tribunal in February 1984. In November 1987, after extensive hearings, the tribunal made recommendations in respect of the Orakei block.''. Members will recall that some National Opposition members of the time made extravagant speeches, and rightly so. I refer primarily to the member for Clevedon and the member for Tamaki, and others. It was clear in my view, and in the view of many others, that they did not have regard to the new legislation. This legislation now incorporates the 1978 Act, which the member for Tamaki helped to introduce in 1978.

I also said at the time: ``The preparation of the Orakei Bill has involved several Government departments that have all co-operated, worked toward, and supported the kaupapa of the legislation. The Ngati Whatua of Orakei Maori Trust Board has been fully consulted in this process. The Mayor of Auckland, Dame Cath Tizard, and the Auckland City Council and its officers also assisted and worked toward resolution of this matter. Several of the recommendations on which the Government agreed to act have already been implemented without the need for legislation.''. Those recommendations, referred to us at the time, were made by the Waitangi Tribunal. Recommendation No. 7, which gave rise to the legislation, stated that there should be legislation incorporating the 1978 Act. That, of course, is the Bill before the House.

I congratulate the former chairwoman of the Maori Affairs Committee, the member for Western Hutt, and the present chairman, the member for Tongariro. They have put a lot of extra time into the Bill. There were consultations between the Ngati Whatua people and the officials, and, as a result, there have been minor technical changes to the Bill introduced on 4 September 1990, but its nature remains the same. National Opposition members of the time opposed the introduction of that Bill. However, after all the discussion in the select committee here and in Auckland, and in Parliament, we have arrived at an outstanding solution that will last for years.

The additions to the 1978 legislation bring about legislation that will incorporate the whole of the Orakei block. The area of Okahu Bay is reincorporated in the Bill. That area was very prominent in last year's opening of the Commonwealth Games, when canoes representing Maoridom made their landing at Okahu Bay. The arrival later that day of the Governor-General and her welcome was a sight to be remembered. We all know of how Okahu Bay was taken by the Crown in the mid-1940s. That land has now been vested in a board representing the Auckland City Council, Ngati Whatua, and the peoples of the region.

History has repeated itself to some extent. The marae on top of the hill at Orakei has a very proud history, one that is supported by the Auckland City Council. Persons who were not Ngati Whatua by tribe---the late Harry Dansey, the late Matiu Tehou, and the late Peter Awatere---were involved in its development. Those people were members of the Auckland City Council for many years and they fought and struggled to raise funds to build that marae---as did many other people in the Auckland community.

During the select committee we were told by various people about the concerns of allowing the administration of the marae to go to people other than those who were involved in the initial stages of its development. However, we need to have regard to people such as Ani Pihema, who was personally involved from day 1 to this day. It would be fair to say, as has been said before in the House, that she

and many people who are not Ngati Whatua---that is not to say that Ani Pihema was not Ngati Whatua---both pakeha and Maori, lent their support to establishing that marae. The great concern is that their support and their efforts might go unnoticed in the re-election of the board members to the trust board.

As I said at the select committee in Auckland, I have every faith in people such as Joe Hawke and Sir Hugh Kawharu, who would not have been covered by the legislation were it not for the fact that the committee in 1978 made the right decision to include in the legislation their tupuna, Tuperiri. Members will find from the evidence presented by some people who made submissions that Mrs Ruby Gray advocated that her tupuna, Apihai Te Kawau, be recognised as the common ancestor. While we all respect Ruby for that, we must have regard to those others who were involved in the development of the Orakei block, and to the part played by Ngati Whatua as a whole.

The Labour Opposition of the time supported the Bill, and any disclaimer made by the member for Tamaki that it was opposed is not correct. The four Maori members of Parliament were also trustees of the marae. It was decided by the committee in 1978 that Tuperiri would be the common ancestor, and that was taken into the present Bill. Some discussions have suggested that we dragged our feet in bringing about the resolution of this Bill. That claim was put before the Waitangi Tribunal by Joe Hawke and his people in early 1984. The resolution did not arrive before me until 1987. The Auckland City Council, the legal advisers of Ngati Whatua, and interested parties---all those involved with the Bill---sat around the table. At the end of the day, Manatu Maori came together to put forward the legislation that is in the House today.

There have been, and there will be, minor amendments to the legislation. The Bill will grant exemptions in respect of rates, reserve contributions, land tax, and other charges. The lands in that area have been categorised to be known commonly as hapu land and as development land, and any change to those designations can be made with the concurrence of the board and the Auckland City Council. If the status were to change, the normal process of a special departure for change of use would be invoked. In my view, there is sufficient flexibility within the legislation for that to happen after consultation with all of the parties has taken place.

The other main aspect involves taking from the original board the sum of \$250,000, which the Government of 1978 gave it. That is now gone as a result of the Act. The contribution of the Government of the day, when introducing the Bill, of some \$3 million was simply to help with new houses, to redevelop those that were there, and to carry out repairs and maintenance wherever that was required. The hapu reservations will provide for those areas known as the Orakei marae, the church, the urupa or burial ground, and the access strip. There are whenua rangatira, and the term is used to describe land such as Okahu Park. People will appreciate the use of that name because of its historic importance to all of our people, both Ngati Whatua and Tainui as a whole. The area also includes Bastion Point or the headland reserves. It has been commonly known to us as Takaparawha, which represents the whole of that area. We believe that in today's times Takaparawha will not evaporate but will simply be characterised in those border areas, such as the Michael Joseph Savage memorial.

The land is deemed to be set apart as a Maori reservation under section 439 of the Maori Affairs Act 1953 for the common use and benefit of members of the hapu o Ngati Whatua o Orakei and the citizens of Auckland. The status of that land shall be Maori freehold land within the meaning of the Act. There is a slight amendment to that clause, but that does not change the interpretation of its being

Maori land.

An extensive consultation process has gone on since the select committee was reorganised and re-established to deal with this historical problem that was outstanding. The trust board is confirmed as the sole authority to negotiate with the Crown and any other body on behalf of the hapu in any future negotiation relating to the customary rights and the usages of hapu.

Clause 19 also provides that the Orakei Bill constitutes a full and final settlement of any claim that the hapu may have against the Crown in relation to the Orakei block. That was a particular concern of the member for Tamaki when the Bill was introduced. I believe that we have ended up with a compromise of the 1978 Act. The Bill before us brings all of the threads into place. More important, the legislation vests the right and the power within the Ngati Whatua people.

There was some comment that Sir Hugh Kawharu was a member of the tribunal that gave consideration to this matter. I categorically state in the House that Sir Hugh Kawharu was not a member of the tribunal that considered the recommendations before the Waitangi Tribunal. Its members were Mr Justice Durie, who was the chairman; Manu Bennett, the former Maori Bishop of Aotearoa; Sir Monita Delamare; Mrs Georgina Te Heuheu; Mr Graham Waugh; and Mr Sorrenson. I want to leave the House and the country in no doubt about the impartiality of the tribunal that gave consideration to this important measure.

One cannot help but recall the event at Bastion Point, but today I shall say simply that I should like to think that we live in a time in which we can come together and discuss these controversial matters in a manner that is fitting to the House and to the nature of both peoples. The Bill before the House represents a coming together of our people, but, more than that, it represents the importance of an understanding of one's cultural values. I want to say that my people from Tainui, from Tarakanahi down, gave their total support to the Ngati Whatua people at the beginning of that fiasco. The relationship between the Tainui people and Ngati Whatua is entrenched genealogically. I need not say any more than that.

The negotiations that went on before all of this---I am talking of years gone by---were the result of confrontations by the late Princess Te Puia and many of our elders of the time with the Ngati Whatua elders. The Bill now brings together all those strands and controversies both in Parliament and amongst the people of New Zealand. In my view, the resolution---the Bill---is not before time, and it will stand in the annals of the history of this Parliament, the people of Ngati Whatua, and all those who have been involved.

I want to pay a final tribute to those people who have passed on since that time. Numerous elders from both tribal groups have since passed beyond the vale, but they will be remembered by members on both sides of the House---in particular, by the member for Tamaki, a former Prime Minister. There were consultations with him---some on the marae, and some in the Auckland City Council chambers and other halls, and consultations with my colleagues as well. In the final analysis, as I formally introduced the Bill, I have great pleasure in taking part in its second reading and in seeing it proceed. Teo Whata.

IAN PETERS (Tongariro): I am delighted this afternoon to follow the former Minister of Maori Affairs, the member for Western Maori, who presented the Bill to the House before the 1990 election. The member was correct when he referred to National Party members as being opposed to the Bill. In defence of the member for Tauranga, for instance, I mention that he opposed the Bill because in his view it had been delayed for too long. There was a 2-year wait before the

Bill came into the House.

The Bill before the House today adds more land and substance to the Ngati Whatua of Orakei. The Bill is the result of the Orakei claim filed by the Waitangi Tribunal in February 1984. In November 1987, after extensive hearings, the tribunal made recommendations in relation to the Orakei block. I want to go back to the time of the 1978 settlement and to the words of Mr Justice Speight, who, after an exhaustive study of all aspects of the vexed question, said: ``The substituted scheme of 1978 approved by the Maori elders and adapted by Cabinet is a handsome remedy for long-felt wrongs, whether they were real or imagined. The scheme worked out by the four wise men and acceptable to the majority of tribal elders and to the Government appears, if I may say so, to bring peace with honour.''

That statement, whilst sincerely believed not only by Mr Justice Speight but also by members of Cabinet and caucus, could not have been further from the truth. First, the 1978 settlement set aside an area of 12.3 hectares as a recreational reserve and a small area of 7798 square metres as a reserve for local or community facilities---both areas to be placed under the control of the Auckland City Council for the benefit of the public. Second, it vested the freehold of an area of 11.6 hectares in a new Maori trust board to be known as the Ngati Whatua o Orakei Maori Trust Board. The board is set up by legislation and will be a board within the meaning of the Maori Trust Boards Act 1985.

Third, the 1978 Bill proposed to set aside an area of 4304 square metres as a reserve for local community health purposes, to be available to the Youthline trust organisation for a hostel site. Fourth, it proposed to add certain small areas totalling just over 1700 square metres to the existing Orakei marae to square off boundaries and to bring them into line with the present fences and occupants. Fifth, the Bill vested an area of 1.7 hectares in the Housing Corporation for residential developments.

The five main points of the 1978 settlement were insufficient for a true and lasting settlement. The Waitangi Tribunal findings of 1987 stated: ``The story of Orakei is not a record of cultural misunderstanding at all. The wrongs that were done were not simply mistakes born of early ignorance; they were breaches of a treaty composed by the Europeans themselves. Ngati Whatua were dispossessed by people, not by fate. They were not newcomers. Ngati Whatua's roots to the land were planted before the Normans invaded Britain. Ngati Whatua were not conquerors, but victors in civil warfare. Nevertheless, they were peaceful people for they welcomed and supported the establishment of Auckland in their midst. As a tribe they did not willingly sell the Orakei block, but fought for over 100 years to keep it. Orakei was Ngati Whatua's last land, and under the Treaty of Waitangi the Crown was obliged to ensure each tribe retained a proper reserve. We also find that, in the terms of the treaty, the Crown was obliged to uphold tribal form of ownership that the people clearly preferred.''

The laws that were to be made were not to permit tribal ownership. A tribal authority had been the main bulwark to the Crown's land acquisitions, and had been the cause of prolonged wars. In the course of those wars the Crown established a Native Land Court, and the court was directed to award native lands to individuals. The troubles at Orakei stem from that law. The Native Lands Act to which we refer was contrary to the principles of the Treaty of Waitangi.

At Orakei and in many other places the problem was made even worse. In 1869 the Native Land Court awarded the whole block to only 13 members of the tribe, which, evidence suggests, numbered well over 300. With a stroke of a pen the majority of a large and compact tribe was disinherited. In the 1880s Tuhaere sought, through a special Act

of Parliament, the ability to subdivide Bastion Point for the maintenance of Ngati Whatua homes. In 1886 the Crown took part of the land under the Public Works Act for more defence work. In 1898 the Native Land Court partitioned the remainder of the block and divided it among 13 owners for their successors. That ended the prospect for future tribal control and underlined the legal position that the 13 original owners had not been mere trustees, as had been suggested.

In 1898 the Crown began investigations to buy the block for European settlement. Meanwhile, the Government was under immense pressure to buy more Maori land throughout the North Island and it appointed a commission, comprising the late Chief Justice Stout and the late Sir Apirana Ngata, to decide what land was excessive to Maori needs and should be sold, and what parts the Maori should be allowed to keep. In 1908, when the commission reached Orakei, it determined that none of that block should be sold. The commission found that the whole should be kept as a tribal reserve, for it was the tribe's last land and the tribe was still living on it.

That finding of the commission was entirely consistent with the Treaty of Waitangi. What was inconsistent was that, shortly after, the Crown set about acquiring the block anyway, and it did so under some pressure. In 1910 the Orakei lessees lobbied Parliament for the right to buy the freehold to their lands. Because of the improvements put upon them it would have been difficult in any event for the owners to recover the lands at the end of the leased terms.

Soon after, the Auckland City Council, with the support of the Auckland members of Parliament, promoted a Bill for the compulsory acquisition of all but the native village. Ngati Whatua reacted once more with a petition challenging the title of the handful of owners, warning off the would-be protesters, and seeking restoration of tribal ownership. That plea had previously failed before Parliament and the courts, but the new petition received the support of the Native Affairs Committee of the House. After hearing lengthy evidence, the committee recommended an inquiry into the title. That inquiry was never held.

Meanwhile, the villagers were experiencing another foretaste of what compulsory acquisition meant. Under a special Act of Parliament a sewer pipe was laid across the beach in front of their village. Despite their objections, Auckland's raw sewage was discharged into their bay. The large raised pipe also blocked their harbour access and caused the village to swamp. Many left Orakei to find a place elsewhere, and the tribe began to break up.

I have taken some time to relate to the House this history, but I have done so because I believe that it is important that the House should be correctly informed about the background of the Orakei dispute. Needless to say, what I have given today is but a small part of the whole. I conclude my comments this afternoon by making two pertinent statements. The first is that in my view the land on the foreshore that was taken by the Crown and that is now under the joint control of the Auckland City Council for parks and reserves and of the Ngati Whatua and others should have been included in the settlement by the Waitangi Tribunal. Having stayed at Barrycourt motel, and having seen the land afresh, I say to the House and to the country that I can see no reason that the Auckland City Council should have a vested right in that land that was not ever the council's, but that belonged to Ngati Whatua. It is my view that this legislation could have been a full and complete settlement if that land had been included.

I say to the House today that there now remains a question mark because I have no doubt that at some future date a member of the Ngati Whatua or some other Maori group will put in a claim for land that I believe is rightfully theirs. I say to the House today that if

Ngati Whatua were my tupuna I should not rest until the land, now a magnificent park area that was lost to Ngati Whatua through legislation and European involvement, was returned.

Secondly, there needs to be some strong acknowledgment by the Ngati Whatua of Orakei of the magnificent work performed by the marae committee in the building of that splendid marae. I want to include particularly in my acknowledgment the two outstanding women, Ruby Gray and Mrs Ani Pihema, whom the member for Western Maori has already mentioned. The Maori Affairs Committee spent considerable time trying to work through the legislation because it was our wish that those two women, and others, should be acknowledged in the final settlement for Orakei. The conclusion of the Maori Affairs Committee was that we could not have made that acknowledgment through legislation. I assure the House that the committee would have done so if that had been possible. We recognised finally that that was not possible, but we also asked, as a gesture of good will, that the Ngati Whatua of Orakei take on that obligation. We hope that the tribe has the ability to do so. I am pleased to conclude this short speech this afternoon on the second reading of the Orakei Bill. In doing so, I wish the Ngati Whatua of Orakei every success and future prosperity.

Hon. PETER TAPSELL (Eastern Maori): It must surely be a measure of our growing maturity as a nation that this afternoon the House will read this Bill for a second time in relative peace and quiet. I suggest that as recently as 10 years ago that would have been impossible, and that 20 years ago it would have been beyond credibility. I want to turn for one moment to my friend the member for Tongariro. I cannot let pass one point he made in defence of his brother the member for Tauranga, when he said that that member had opposed the Bill because it had taken too long to pass through the House. There is no good reason for saying that. The member for Tauranga opposed the Bill because it served his purpose at that time to carry out an orchestrated campaign of anti-Maori activities one after the other. When it no longer served his purpose, when he had been admitted to Cabinet as Minister of Maori Affairs, he chose to perform a volte-face and to come on to the other side. Let there be no doubt about his reason for doing that---and I suspect that his brother knows that full well.

I shall not dwell on the actions or inactions of individuals---although, of course, their contributions are important. I am concerned with the broad policy decisions and the effect they had on people at that time. New Zealand's history is not one to be totally proud of. Indeed I suspect that, had it not been for the fact that we are a small country and that the numbers involved were very small, the history of New Zealand might often have been quoted in many countries as the acme of injustice. That is not to say that there were not generous acts by individuals and by Governments, but it will serve no useful purpose for us now to cringe away from the truth, and the truth was ascertained and set out clearly in the report of the Waitangi Tribunal.

The facts are that successive central governments, local and regional governments, communities, and individuals, systematically and deliberately, over a long period of time, used their powers to cheat the Ngati Whatua of their land. It will serve no useful purpose for us now to look back on the past with rose-tinted glasses. The tribunal's report sets out in detail some of the incredible measures taken out of pure avarice to dispossess Ngati Whatua and to acquire their land. That ought to be said.

I want to pay my respects to my colleague the member for Western Maori, who introduced the Bill. His introduction of the Bill followed on from the report of the Waitangi Tribunal. I want to say again, and



to make clear, that the earlier Bill---the 1978 Bill introduced by the member for Tamaki---was introduced after proper negotiations, or some negotiations at least, with members of Ngati Whatua. I am willing to believe that the member for Tamaki introduced that Bill with the best intention in the world. I understand that when the second Bill was proposed he had certain misgivings---quite legitimate misgivings, I think---based on the fact that we could not go on for ever having claims made on a single piece of land, making a settlement, reviewing it, making a new settlement, reviewing that, and so on. I accept that.

However, if the exercise shows anything, it makes it very clear that in investigations of supposed past injustices, particularly when they relate to land, it is essential that there be some third, disinterested party to carry out the initial investigation. It was a mistake, it is a mistake, and it will always be a mistake for the Government to negotiate directly with those persons who are said to be the representatives of Maori people. It will always be desirable to have some third, disinterested party make a recommendation that the Government can consider.

It is a matter of record that the Waitangi Tribunal has carried out that function with absolute integrity. Indeed, I think that the tribunal has come to be seen as unique and as one of the more important judicial bodies in this country. On this occasion the tribunal carried out a full investigation---every interested person had a say---and it came down with recommendations. The Government has seen fit to accede to those recommendations, and I commend it on its actions.

I draw attention to another matter that the tribunal sets out very clearly: that some will say that Ngati Whatua have won this particular case. However, this is the end of the beginning; it is not the beginning of the end for Ngati Whatua. With the Bill having been passed, and their claims having been acceded to, Ngati Whatua must now demonstrate that they can make good from those claims. As I looked through the tribunal's report, it struck me to see a measure of the Ngati Whatua's position in the nineteenth century---1792 native canoes in Auckland harbour, bringing to market 200 tonnes of potatoes, 1400 baskets of onions, 1700 baskets of maize, and 1200 baskets of peaches as well as many tonnes of firewood, fish, pigs, and kauri gum. I wonder how many baskets of peaches one could collect if one went around Ngati Whatua at present. I am not criticising the Ngati Whatua for that. However, I simply make the point that they must not rest on their oars now that the legislation is about to be passed. They should aspire to reach the greatness that their elders had in the nineteenth century.

In due course the Bill may come to be recognised as one of the more important pieces of legislation relating to so-called Maori claims. I make the point that we are concerned about the claims of Ngati Whatua and other Maori groups---not out of the simple goodness of our hearts as parliamentarians, but because the position in New Zealand as distinct from the position in Australia, Canada, or any other British colony is unique. At the time that the Ngati Whatua were dispossessed of their lands they were British citizens. Quite unlike the position in Australia, Canada, or anywhere else, the position in New Zealand is unique in that the so-called Maori wars that led to this problem were, in fact, civil wars between British citizens. At the time, the Maori were British citizens; they were entitled to the protection of the law. In the event, they were denied that protection, and it is that fact that leads to the legitimacy of claims and the importance that those claims be fully investigated and justly dealt with.

The Ngati Whatua o Orakei Maori Trust Board will have a role in

the future. I say very clearly that the Maori trust board legislation should be consolidated and amended---and I have said that before today. I think that 16 trust boards are each covered by separate legislation. Perhaps with the exception of one or two, few of them are carrying out the role that they should carry out for their beneficiaries---in particular for their young people; their children. It is important for that legislation to be amended so that board members are democratically elected, so that the boards are required to keep their beneficiaries fully informed of their actions---both for the past year and for the coming year---and so that the boards are required to have their accounts duly audited. That has not been the case in the past, and it should be changed.

I hope that the Ngati Whatua o Orakei Maori Trust Board will, given its new mandate, take up that challenge and ensure that it carries out a role in the interests of its people---in particular, in the interests of the children. It is obvious that the Ngati Whatua o Orakei Maori Trust Board will have a role in the city of Auckland as a whole on behalf of Maori people, and I hope that it will accept its responsibility to carry out that role in such a way as it would be in the interests of both the Maori and the European in the area.

My final point is that I hope that this legislation and other legislation like it will not mislead Maoridom into the belief that it can turn back to the nineteenth century with any advance. The marae, the custom, the tradition, and the culture of the people are there as a strength, but not to rest on. The future is in front of us, and certainly in front of Ngati Whatua. They must now use the wisdom of their elders---those important cultural pursuits that their elders left them. However, they must go forward into the next century; there is no going back. It is important for them to have a marae. It is a mistake for them to believe that their return to the marae will in some way enhance their standing in the city of Auckland; it will not. I hope that they will use the marae and the reserves that have been provided to them as centres for discussion, as centres of celebration and tangihanga, and as centres where all of their people can take part and be fully informed about those activities that are taking place in the city of Auckland and in Wellington in Government. I sincerely hope that Ngati Whatua will avoid the temptation to believe that a return to marae living has any great future in New Zealand; it does not.

I suppose that the Bill is unique in this country---and probably in other countries; I know of nothing quite like it. I commend the report of the Waitangi Tribunal to all of those who would read it. Indeed, I see a great deal of sense in schoolchildren throughout New Zealand---in high schools, anyway---being required to read through the tribunal's report. I am certain that it would do them a great deal more good than reading the purple book about which there was a lot of fuss in the South Island.

The report sets out very clearly and accurately some of the injustices of the past, some of the rather miserable activities of some people---not all of them European---and some of the very generous activities of other people. It sets out the ways in which we as a nation can develop the better features of our past to build a nation in which there is a degree of both unity and diversity. I hope that the education authorities will consider making the report of the Waitangi Tribunal on the Orakei claim required reading for children. By the way, it is also written in very good English. I am not sure who wrote it, but whoever did---

Rt. Hon. Jonathan Hunt: A pleasant change.

Hon. PETER TAPSELL: It is a very pleasant change. I suspect that the tribunal kept lawyers well away from it. Members might know about my oft-repeated statement that lawyers are very good at interpreting

law; however they should never be left unsupervised to write it. I am very pleased to take part in the debate on the second reading. I commend my colleague the member for Western Maori, who introduced the Bill as Minister of Maori Affairs under the previous Government, and I hope that the member for Tongariro will not persist with the nonsense about his brother's actions.

SONJA DAVIES (Pencarrow): The Bill is a landmark, as other speakers have outlined, because it establishes an important precedent in Crown/Maori relations, and, as well, it implements several of the recommendations made by the Waitangi Tribunal in its 1987 Orakei report, as was mentioned by my colleague who has just resumed his seat. The previous Government, which introduced the Bill in 1990, saw that report as a commitment to providing a thorough, ongoing, and just process for resolving Maori land grievances. The report of the Waitangi Tribunal, as was mentioned by the previous speaker, outlines the claims in detail and the history of the land and the struggle by Ngati Whatua people for sovereignty of their land. I like to think that in the years since the bitter protests of 1978 we have learnt a great deal.

The select committee received a great many submissions on this important legislation---although not as many as other committees on other Bills. Some of the 18 submissions caused the committee a great deal of concern. Clause 4 was a case in point: it vests hapu land in the trust board, and, amongst other things, it transfers the marae land to the Ngati Whatua o Orakei Maori Trust Board in an inalienable estate. That fact was the subject of 12 of the 18 submissions; 12 supported the transference but those that did not came from a variety of directions, and their reasons are interesting and worthy of comment.

Mr Tehuia opposed the transfer because he believed that historically the entire region known as Orakei was within the Tainui boundary, not Ngati Whatua. The Okahu Bay Outrigger Canoe Club believed that it would be a departure from the tradition of marae that had grown over the past 30 years. It was also believed that the Ngati Whatua of Orakei Maori Trust Board had its own high work-load and should work in harmony with the Orakei Marae Reserves Trust Board---and I shall have something to say about that shortly, because committee members agreed with it, as well. The Citizens for Racial Equality believed that the ownership of the land comprised in the land block had been determined already by past legislation and should be allowed to retain its current status.

The Orakei marae education centre and the Orakei Marae Reserves Trust Board are the two committees that built the marae by transforming a paddock into an attractive marae complex. They both believe strongly that they did not receive proper recognition or credit in the report of the Waitangi Tribunal---and I shall say something about that in a moment. I want to comment on the role played by women in relation to the development of the marae. They established several education and work-related facilities for young Maori people and they feel that they are very much affected by that part of the Bill. I speak in particular of Ani Pihema and Ruby Gray, but, of course, others were involved and it would be wrong not to mention and to honour them. All members of the committee agreed that the work carried out by those women was outstanding and extremely worth while, but, of course, there was no way in which the committee could include a recognition of that worth or safeguard its continuation in the legislative process, and that was one of the things about which the committee had to be realistic. I join other members of the select committee in strongly urging that that work be recognised under the new regime once the Bill is passed.

The passing of the Bill will signal a lasting solution to a

longstanding problem. In that climate it is our strong hope that Ngati Whatua and the women concerned can resolve any residual problems so that the work can continue co-operatively and can be of benefit---in particular, to young Maori people in that area. As Ani Pihema said in part of her submission: ``The Orakei marae and education committee was [sic] established in 1964 and became incorporated to ensure their accountability'---that says something because they were concerned about accountability in 1964---``because they had to raise funds to provide two further temporary buildings to cope with the educational and craft programmes as well as the social needs of the community,'---so there is a long history of that work in that marae---``and with the support of the kaumatua, in particular, the women who were involved on a daily basis with the educational and craft activities, the centre went from strength to strength and a real partnership between Maori and pakeha working together happened, which is still in existence today.'---and long may it last.

She said: ``I am talking about people of substance whose loyalty and caring was beyond my expectations as I was under the impression that we had a monopoly on aroha.''. Those sentiments are very important because the work of those women was enjoined by the people of Auckland. All sorts of people made contributions to the work of that marae and it is in the interests of the marae's future that that continue. The Auckland City Council, as has been said, played a major and supportive role in relation to the Bill. That involvement began in the days when Dame Catherine Tizard was mayor, and it has continued. It indicates how far our society has travelled towards recognising the rights of Maori to land that they consider to be their own.

When the select committee travelled to Auckland it heard, among other submissions, proposals by the Auckland City Council that offered some amendments to Part III. The first amendment related to the cost of the management of reserves and it was an important issue because it is ongoing. The council expressed some concern about clause 24. It felt that the clause as drafted requires that the council accept costs and expenses generated by another statutory body and in circumstances in which, under clauses 24 and 25, the council appointees have a minority vote on the board. So the council thought that it would be stuck with a lot of expenses but would not have equal rights. It proposed an amendment to clause 24---namely, that the council not be liable for costs relating to the construction, maintenance, or operation of any building or facility erected on the whenua rangatira or by or on behalf of the trust board unless the council agreed to be liable. The committee did not agree that that should happen or that the amendment should proceed.

The council also recommended that, subject to the management clause, clause 23 be extended to allow for leases and licences to be granted for the purposes of grazing animals. The committee believed that clause 23 provided for that already in relation to the beneficiaries to enable them to carry on any farming activities or to conduct any tribal, community, or cultural activities. So it was not considered appropriate that the power to grant such leases and licences should be extended to apply to persons who were not beneficiaries.

The question of the future of the land is important to us all as New Zealanders and citizens of the country. The legislation is a landmark in what it does. I was really concerned when the Bill was introduced in the last stages of the previous Government that the National Opposition was very much against the Bill, and I am really delighted that there has been a bipartisan approach to it. Justice is justice wherever it is seen, but it not only has to be seen but also

has to be acted upon. People now realise that this excellent piece of prime Auckland land, which I am sure developers would like to get their hands on, belongs to the Ngati Whatua and should continue to belong to them. I wish them every success with the work they do in the future, and I hope that it will expand in the way in which they want. I hope that many people, particularly Maori people, will benefit from that work, and I hope also that the Maori/pakeha partnership continues. It is only by understanding each other's problems that we can move with more certainty towards the partnership that we all seek for Maori and pakeha.

The report of the Waitangi Tribunal that has been mentioned before is a work that will be of incredible use to future students of Maori land problems and the history of the land struggle. It was a bitter struggle in the beginning, and I am pleased to be part of the final days when we will see the resolution of that struggle. I shall be pleased to see the Bill passed, because I think that it will become part of our history and also part of the future of the country, because it shows the way. Every secondary school child should read the report. The report is extremely readable, very interesting and very worth while, and a lot of time was put into it. A lot of time was also put into the Bill. We must now move on with it, and I shall be delighted when it is passed.

I want to quote from the submission of Father Shirres, who presented both written and oral submissions to the Waitangi Tribunal. He summed up the Ngati Whatua's case with a quote from Pace In Terris---Peace on earth---an encyclical letter by Pope John XXIII, which states: ``One thing is clear beyond dispute. Any attempt to check the vitality and growth of racial minorities is a flagrant violation of justice, the more so if such exertions are aimed at their extinction. Indeed, the best interests of justice are served by those public authorities who do all they can to improve the human conditions of the members of these minority groups especially in what concerns their language, culture, ancient traditions, and their economic activities and enterprise.''. The legislation meets those sentiments. I am proud to have been part of the introduction and support of this issue by the previous Government, and I shall be extremely satisfied when the Bill is finally passed and is part of the statutes of our land.

PETE HODGSON (Dunedin North): I rise to speak in favour of the second reading of this Bill. The Bill establishes a very important precedent in the relationship between Maoridom and the Crown, and it deserves bipartisan support, which by all accounts it has received. I say at the outset that the decision of Government members not to continue with their opposition to the Bill is a good decision, and I congratulate them on that. The Government is to be congratulated on coming to its senses, albeit a little belatedly. It is good that the Government has changed its mind. It is a welcome and proper U-turn. Not all U-turns are bad; this one is good and it is one that I applaud. I also thank the Government for its wisdom.

Ian Peters: Stop being political; it's a Maori Bill.

PETE HODGSON: I shall come back to that statement in a few minutes. The change in approach reflects the changed view that can be found in New Zealand in general. The relationship between two cultures in one country has a long history, and in a strange way it is a history of which I am part. My roots are pakeha and pakeha alone, and by pakeha standards they are very deep roots. My ancestors have been here for a fair while by pakeha standards. They were here at the arrival of the second culture in Aotearoa. They were here before the treaty, and they were here at the time of the treaty. My great-great-grandparents were the first Europeans to be married in Aotearoa and my contemporary relatives still own and farm land in the

far north. I do not know how that land was acquired.

I am not here to cringe about my heritage nor to offer a speech of apology or dismay. My ancestors were part of a cultural clash that saw amongst other things the removal from Maoridom of land that ought not to have been removed. The Orakei block is one such piece of land. The member for Eastern Maori summarised the change in attitude that has now begun to emerge, when he said that 10 years ago bipartisan support on such an issue would have been most unlikely, and that 20 years ago bipartisan support on an issue of this ilk would have been unthinkable. It is actually worse than that. Only 15 months ago when the Bill was introduced by the Labour Government one Opposition speaker after another spoke against it and preferred to take the view that the 1978 Act as it referred to the land in question was sufficient.

Ian Peters: They were paid to oppose it!

PETE HODGSON: The member for Tongariro says that members of that National Opposition were paid to oppose the legislation. The member for Tamaki in whose European or general electorate the land in question lies said that the Bill was a sham. He went on to give a whole lot of reasons, which, by today's standards, are almost inexplicable. In his contribution to the second reading the member for Tongariro said that his brother the member for Tauranga was recorded in Hansard as opposing the legislation because it was too long in coming. He referred members of the House to Hansard and to the comments made at that time by the member for Tauranga.

The member for Tongariro has a very different view of history from that of Hansard reporters, who have recorded the member for Tauranga as saying: ``Why, after such a short time, are we changing it?'. He went on to say: ``Is it possible 10 years down the track for Ngati Whatua or an assemblance of that tribe to turn up at the Waitangi Tribunal with a new claim and demand future legislation?'. That is at variance with the bit of history that the member for Tongariro would have had the House believe about the views held by his brother. His brother did not hold the view that this was a Bill that was too long in coming; his brother held the view that it was a Bill too soon in coming, and Hansard records that in black and white. It seems to me that the member for Tauranga has been part of the maturation process over the past 15 months. I could be less kind than that, but I shall not be.

It is a good idea that it be recorded that the member for Tauranga has made a significant and very welcome U-turn on the Bill. I look forward to his voting for the Bill when it comes to the vote shortly. I hope that he will vote if he is in the House. I hope that no opposition can be found within Government ranks. That would confirm my hope that some maturity is emerging within the member for Tauranga, and, for that matter, within the member for Tamaki. One would hope that on the eve of his retirement the member for Tamaki would allow the Bill to be passed unhindered and would not put up some kind of titular opposition to it. It would be unwise and inappropriate for him to do that, and I hope that there will be a reflection of the growing maturity of Government members, and, therefore, of the House in general.

The member for Clevedon was interesting. He said that the Bill would never see the light of day and that it was futile. The member for Tauranga said that it was completely wrong, that it was wishy-washy, liberal, and extreme, and that the Labour Government was wrong in its decision to pass it. It seems that that Government was not wrong, because the present Government now agrees, and I again applaud that change in point of view. The member for Clevedon said that for 6 years the Labour Government had been giving Maoridom very high expectations, well knowing that it could not meet those

expectations. It is good that the expectations given by the Labour Government to Maoridom will be met by this Government. It is good that those expectations were not squashed and that they have been met. I am glad that the members who spoke in the introduction debate in September 1990 are wrong, and it is great stuff that there is an apparent maturity among Government members.

The member for Papakura of the time said: ``Constitutionally, the Bill cannot proceed, nor will it proceed for the simple political reason that there will be a change of Government. The Opposition will vote against the Bill. It will not survive for that reason.''

Ian Peters: What a waste of time.

PETE HODGSON: The member for Tongariro said that I ought not to make political statements about Bills that concern Maori issues. The fact is that speaker after speaker in the introduction debate made political statements about Maori issues, and they were wrong. They have realised that, and I congratulate them on that. The member for Whangarei---who is now Minister of Police---said at the time: ``I am saddened about the Orakei Bill because there is not a hope in Hades of its becoming law. I understand that constitutionally the matter just drops off the end of the Order Paper. It cannot proceed.''. The Bill has not dropped off the end of the Order Paper; it appears that it will proceed. I hope that the Minister of Police will vote for the Bill when the time comes for it to be put to the vote, and if there is no division one assumes that his support for the Bill can be taken as read.

The history of that land is well known; it has been well explained by previous speakers. The land in question was the subject of one of the more bitter high-profile disputes in New Zealand's history. No photographic record of this nation is complete without those stunning images of the clash between the police and the people on the Orakei marae in the late 1970s---stunning images of forces facing each other. It turned out that one of those forces---the Crown---was wrong, and this Bill belatedly recognises that reality. The result of that initial clash was the 1978 agreement, and that agreement found its way on to the statute book in that year. The National Government of the time perceived it to be adequate.

However, this Bill repeals that law simply because the agreement is now recognised in a bipartisan way---even by the member for Tongariro---as being incomplete and insufficient. [Interruption.] The member should go back to his seat. The pivotal event over the past 13 years was the legislation passed by the fourth Labour Government in 1985. That legislation expanded the Waitangi Tribunal and allowed the relitigation of the Orakei case. In a comment that I think is pivotal, the tribunal report states: ``Piriniha Rewiti could have had no knowledge or expectation in 1978 that the Treaty of Waitangi Act of 1975 would be so radically amended by a new Government.''. It was radically amended by a new Government---the fourth Labour Government---in 1985. It allowed the terms of reference of the Treaty of Waitangi to be broadened. It gave the Treaty of Waitangi the clout and the status that it now has.

That change allowed the case of the Orakei claim to be relitigated properly and adequately, and that relitigation has taken place. The recommendations came to Parliament; the Bill was introduced in September 1990, was opposed by the Opposition of the time, and is now supported by those same people when they find themselves in Government. I congratulate the Government on its change of view. So we grow, and so we grow as a nation.

Hon. RICHARD PREBBLE (Auckland Central): I am disappointed that no Government member is debating the Bill. The Bill is important and should be discussed. Indeed, Government members owe it to the country to explain why they are supporting the Bill.

Hon. Jenny Shipley: We all agree.

Hon. RICHARD PREBBLE: I do not think that that is so. I understand that some Government members do not support the Bill, because they are recorded in Hansard as opposing it. I want to hear from them today whether they support the Bill, whether they have changed their minds, and, if so, why. First, I congratulate the member for Western Maori, who introduced the Bill when he was the Minister. He was severely criticised at the time. He came under quite savage parliamentary criticism, and under criticism from outside the House, ridiculing him for having introduced the Bill. He has now been vindicated and it is rare that a person can receive a vindication so rapidly after the vilification.

I also want to record that, when the Labour Government decided to adopt the proposals of the Waitangi Tribunal, the Cabinet of the day sent the member for Western Maori and myself to meet the various parties to the Orakei claim. The former Minister of Maori Affairs, the member for Tauranga, is recorded in Hansard as having said that the the Hawke family was in no way involved. That is not correct; I was there, and Mr Joe Hawke was there, as were all the people regarded as leaders of that particular tribe, or subtribe. We most certainly had very amicable discussions. They were friendly. In July 1988 the Minister of Maori Affairs met the Minister for State-owned Enterprises---myself---and the member for Northern Maori. I believe that that member's standing and mana most certainly enabled us to reach a settlement. I want it recorded in Hansard---because it may be that in 10 years' time somebody will come forward and say that perhaps everybody was not there and that everybody did not agree---that as a Minister of the Crown I was there.

I asked the people who were there whether all of the people who should have been there representing the people involved were in the room and they said that they were. I have not received a single letter or any communication from anyone suggesting that we did not meet all of the people who should have been involved, and that position is different from the one in 1978 when apparently some of the people who felt that they ought to have been involved were not. We then asked whether there would be a full settlement if the proposals were adopted and introduced. The answer we were given quite unequivocally was yes, and I believe that that should be recorded in Hansard.

I am pleased that the Labour Government gave priority to the introduction of the Bill because we wanted to have it recorded that this was the agreement---to have the legislation introduced---but we did say that we would have some difficulty in getting it passed. I think that in a way it is better that the Bill is being passed now by the National Government, which was in Opposition at the time, because it has been forced to make the legislation bipartisan. If the Labour Government had passed it, the National Government could have continued to go round the country saying that it was against it but was leaving it on the statute book.

I commend the new Minister of Maori Affairs for promptly giving the Bill priority. I think that that will do him a lot of good. He has been the Minister for only 6 weeks and he has managed to take the Bill to its second reading stage. No Government member seems to have given him any credit for that so I want to give him that credit. I know what a fight it is at this time of the year to get priority, and that shows that the new Minister of Maori Affairs is attempting to put positive achievements on the table rather than just rhetoric.

I turn to the former Minister of Maori Affairs, who is putting himself forward up and down the country as the person who really speaks on Maori issues. I say to that member that if that is the case he should speak on Maori issues today. I look forward to his



statement on the matter. I say to the House that I had leave today but when I heard that the Bill was on the Order Paper today---and of course we only know later what the Government will do and he would know much earlier---I immediately said to the Whips that I wanted to return to participate in the debate. There are some matters that are very important that should be recorded in Hansard for the good of New Zealand and some matters should be cleared up. I want to know whether the member for Tauranga is for or against the Bill.

Hon. Murray McCully: Probably both.

Hon. RICHARD PREBBLE: Well I suppose that that member knows him better than most. I just want to say that in Hansard, Volume 510, at page 4206, the member for Tauranga is recorded as saying: ``I say straight up that the Opposition is opposed to the proposed Bill, and will vote against it.''. Then he went on to give a whole lot of reasons, some of which were just rhetoric. He went on to say: ``Is it possible 10 years down the track for Ngati Whatua or an assemblance of that tribe'---he was criticising whether we met the whole tribe---``to turn up at the Waitangi Tribunal with a new claim and demand future legislation? We cannot support that clear record of failure to keep a consistent line about what that people rightly or wrongly claim to be theirs. Settlements should at least last more than 9 years, and in this case it is not good enough.''.

Then he went on to make some specific statements when he said: ``I refer to clause 15. Other matters will be considered some time in the future if the matter ever comes back before Parliament. Clause 15 prevents alienation. How can Maoridom ever be a mature race and how can it ever be equal with the remainder of New Zealand if it is to be treated constantly like a child? Why does that clause state that the Ngati Whatua may not alienate their land? Why are there special requirements, conditions, and caveats on the quality and quantity of ownership that apply only to Maori? The Labour Party has never forgotten its socialistic attitude to the Maori.''.

I had a look at clause 15. It has come back from the Maori Affairs Committee supported unanimously both by Opposition and by Government members, and it has not been amended. I ask the member for Tauranga whether he has changed his views about that clause. Will he get up in the House and take back the statements that he made and the aspersions that he made against the great party that I belong to?

Hon. Jenny Shipley: Ha, ha!

Hon. RICHARD PREBBLE: The Minister hoots. Do members support clause 15 or do they not? Clause 15, ``Restrictions in relation to land'' states: ``Subject to sections 16 and 17 of this Act, the Trust Board shall not sell, lease, mortgage, charge, or otherwise dispose of any land vested in it by this Act.''. That is what the clause states and it is the clause that, among others, the member for Tauranga told us he was opposed to. I know that outside of this House at various marae around the country when the member for Tauranga was Minister of Maori Affairs he indicated that he was in favour of the Orakei Bill. That is what he said to Maori audiences.

I say to the House that that member was Minister of Maori Affairs not for 6 weeks but for 10 months---almost a year. For 10 months the Bill languished---and I use that word advisedly---in the Maori Affairs Committee. Why did it do that? That committee received instructions from the Minister of the time that it was to reconsider the whole Bill. That was what he told the committee. He told the member for Tongariro that he did not want to see the Bill again. He left it with the committee at the same time as indicating to Maori that he was in favour of it. I say that the former Minister of Maori Affairs in a National Government for 10 months---and I will accept this---was right up with the rhetoric. He gave speeches that stunned Maoridom about what he was going to do and what he was not going to

do. If one looks at the record can any member state a single thing that that member did as Minister.

Rt. Hon. Jonathan Hunt: He dressed well.

Hon. RICHARD PREBBLE: How did that help Maoridom? It did not do a thing. He produced reports and still cannot find the costs. The ombudsman has told me that we will never know the costs because the member has taken all the records with him. But that is beside the point and not really relevant to the second reading debate. I say to the member for Tauranga that one of the things he could have achieved as Minister of Maori Affairs was that he could have taken the Bill and within 6 weeks he could have had a second reading debate on it. How do we know that? The new Minister of Maori Affairs, whom he rubbishes---and who would want the job of taking over after---

Hon. K. T. Wetere: I'll have it any time.

Hon. Jenny Shipley: Lots of people.

Rt. Hon. Jonathan Hunt: The Minister of Social Welfare says, ``Lots of people.''. She would.

Hon. RICHARD PREBBLE: Well it is all relative, I suppose, to be given the job as Minister of Maori Affairs after a high-profile sacking with racial tensions of the kind that arose because of that sacking. I know that the member who is now Minister of Maori Affairs did not ask for the job and he took it on because he saw it as his duty as a parliamentarian and his duty as a New Zealander to do it and Opposition members acknowledge that. I say to him that as an Aucklander I am delighted that he is bringing the Bill forward because---and I say to the rest of the country---this issue has been a cancer in Auckland. It has done enormous damage to the people of Auckland, to race relations, and to Parliament's public image.

Peter Hilt: Not as much as the member.

Hon. RICHARD PREBBLE: Was the member actually on Orakei marae? He might have been; I have not been through the photographs to see whether he was there. I am proud of my role as an Auckland member of Parliament and as a Cabinet Minister in the previous Government. I joined the member for Western Maori and met the people to achieve this historic agreement. I am proud to have been involved. I am proud of the member for Western Maori, and of the member for Northern Maori as a local member. The member for Northern Maori can chalk this up as a most extraordinary achievement for his constituents, and the whole House should give him credit.

I say to the member for Tauranga that he owes an obligation to the House, to his party, and to the Maori people to tell them where he stands on the issue. If he does not stand by his words clearly recorded in Hansard, Volume 510, at page 4208, he should not rely on a messenger-boy from the Maori Affairs Committee. He should take this opportunity in the second reading debate to tell members where he really stands. If he now thinks that this is a good Bill---who knows what he thinks---he owes an apology to the member for Western Maori and to the House. He should be man enough to get up and give that apology---that would improve things. He should also acknowledge that the Minister of Maori Affairs, who may not have made as many speeches as the member for Tauranga has made, has done much in 6 weeks.

Bill read a second time.

**4 Dec 1991, 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session, Hansard Vol 521, pp5870-5876**

**Orakei Bill** (Third Reading)

Third Reading

Hon. DOUG KIDD (Minister of Maori Affairs): I move, That this Bill be now read a third time. In so doing, I report that the House has constructively debated this important Bill. There was some divergence

of views, but the House had dealt with the matter calmly, and, I believe, appropriately for a topic of some solemnity and importance to Maori. It is important to note that this Bill builds on and beyond the previous Bill. It does no violence to that previous one, but seeks to record a settlement in broader terms, encompassing what are understood to be all of the grievances of Ngati Whatua back to 1840, that was made possible by the 1985 amendment to the Waitangi Tribunal legislation.

It is a settlement made in our time according to our lights by all of the parties. The Bill was not much understood by most in the House from the time of its introduction until now, but I think that it is a little better understood now than when it was first brought to our attention. Whether it endures will be for those who follow us, but it certainly will not be for want of good faith that we have tried to do what we believe is right. But I can say this with some certainty: I think that the mana of both the Ngati Whatua and the Crown will be enhanced by the passage of this Bill.

Dr BRUCE GREGORY (Northern Maori): I join in the sentiments expressed by the Minister. The Bill is a significant historic measure, not just for Maori, as the Minister said, but for all New Zealanders---in particular, New Zealanders who live in the environs of Auckland. The Bill has begun in the right way: it has addressed the issues of the past by due deliberate and reasoned argument. It has sought compromises on those issues that the select committee has not been able to resolve satisfactorily in the interests of both parties, and that fact has been highlighted in the debate. The Bill is also significant because the organs or mechanisms that have helped us to achieve this outcome have also been established on the basis of a historic document---the Treaty of Waitangi.

I refer particularly to the Waitangi Tribunal. The select committee carefully read the tribunal's decisions. It incorporated almost unchanged its recommendations, and the result is that committee members can be sure that those who follow in our footsteps will not be able to point an accusing finger and say that we did not do the job---certainly, I feel that personally. In truth they will be able to argue that, on the information and deliberations presented to the select committee, it did justice to the cause and to the people of New Zealand.

The Bill has addressed the genealogical ties---the history, of which we cannot always be proud---but, none the less, we have been dispassionate in our expression and in our feelings about those times. We have come through feeling so much the better for it and equally for the generations to follow. The extent of the Bill has gone beyond the 1978 Act because there were concerns that dealt with the injustices that certainly affected the people of Ngati Whatua dating from the time that the Treaty of Waitangi was signed.

During the debate some members have said that the Bill is not the end of the exercise. But we have begun on the right road; the canoe is heading in the right direction; I may even say that the ship is heading in the right direction. It cannot but improve things for our nationhood, and equally we can say, both Maori and pakeha, that we have had a responsibility that we discharged to the best of our abilities. We can only go from a positive to a more positive position in relation to the Ngati Whatua and those who represent the Crown henceforth.

The Ngati Whatua o Orakei Maori Trust Board and the Orakei marae reserve trust board are two institutions that have a responsibility that I am sure they will discharge to the best of their abilities by representation not only from Maori of Ngati Whatua, and perhaps even Maori outside the confines of Ngati Whatua, because some of those

representations---in particular, from the reserves trust board---will come from the ranks of those who serve in other local authorities such as the Auckland City Council.

The combined wisdom of those two organs named in the Act will produce a management plan; a responsibility to the discharge of namings of the whenua rangatira is an exercise that will lead to the further unity of our peoples. It has provided a discharge with honour---that is, the correction of some discrepancies that have occurred in our history. It has reawakened young people's desire for good will, and it provides a blueprint for many other issues that will come before the House in future that until now have been the subject of discord, disruption, and cultural and racial disharmony. But I believe that the Bill will show the nation that we have the ability to address those issues dispassionately and for the good of all New Zealanders. I support the Bill, and I hope that the House in its wisdom does likewise.

Rt. Hon. Sir ROBERT MULDOON (Tamaki): In the third reading I shall record some of the things that occurred during the Committee stage of the Bill. I do not propose to vote against the third reading or to attempt to persuade others to do so. During the debate on the short title I recorded my views, and although very few of my colleagues voted with me it should be noted that some members abstained deliberately. I was sorry to see Auckland members of Parliament voting for the Bill. When they understand more clearly what the Bill means for Auckland some of them may regret the fact that they voted for it. I also record that among those who abstained was the former Minister of Maori Affairs.

The Bill solves nothing. A good deal of what was said during the Committee stage was inaccurate---for example, the suggestion that the settlement and the legislation of 1978 took nothing into account before 1975, which at that time was the date on which disputes going to the Waitangi Tribunal were cut off. The settlement of 1977, which was enshrined in the law of 1978, covered the whole of the disputes of the Ngati Whatua at that time, going back as far as the elders wished to go. It is also significant that there was some reference to Professor Kawharu, who had been a leading figure in making the latest claim to the Waitangi Tribunal. Hugh Kawharu is not a Ngati Whatua of Orakei. He comes from the original northern Ngati Whatua of Rewiti in the Helensville area, but what is most important is that he was the negotiator on behalf of the elders in 1977. He was right in the thick of the negotiations at that time.

When the Waitangi Tribunal legislation was amended by the Labour Government he obviously saw a means of having another go and getting a bit more. He succeeded, but that was not a good omen for the future, because no sooner had the Waitangi Tribunal's recommendation been made and accepted by the Labour Government than another claim was put in on behalf of the Ngati Whatua for the whole of the land on which Auckland is situated, plus the land on both coasts north to the Kaipara. If the little bit of land in Orakei is worth \$3 million then members should take a moment to work out what the whole of the land involved in the next claim is worth and they should then ask themselves whether anything has been solved with the passage of this Bill.

During the Committee stage I quoted the Hon. Venn Young, and I repeat his words now. About 10 years ago in the House he quoted Mr Justice Speight, who, after an exhaustive study of all aspects of this vexed question, said: ``The substituted scheme of 1978 approved by the Maori elders and adopted by Cabinet is a handsome remedy of long-felt wrongs, whether they were real or imagined. The scheme worked out by four wise men and acceptable to the majority of tribal elders and the Government appears, if I may say so, to bring peace

with honour.''. One of my colleagues on this side of the House interjected at that stage and questioned the authority of Mr Justice Speight. Those of us who were involved at the time know that he made a very thorough examination of the position back not only to 1975 but to the beginning. Those were his words. I repeat them, and I want them reported in Hansard, which is why I am quoting them during this third reading debate.

We have solved nothing tonight. The literal meaning of Tamaki Makaurau is ``Tamaki of the many lovers''. The reason for that name is that over the centuries it was fought over by tribe after tribe after tribe. Reference was made to Waiohua, the Auckland tribe who met the Ngati Whatua of Rewiti in battle in the Waitakeres at a place called in Maori the place where many fell together. Kiwi Tamaki, the great chief whose fortress was on One Tree Hill, was defeated. He was not Ngati Whatua. That was when the Ngati Whatua came. Why should we, because of a whim of legislation, cut all these events off at 1840 and say that if people held land in 1840 they are entitled to it in 1990 even though the people who are entitled to it cannot be identified one by one? There would not be a pure descendant of Ngati Whatua of 1840 left today with nothing but Ngati Whatua blood. The four Maori members know that as well as I do.

It becomes a sham. It becomes a recipe for trouble for as far ahead as we like to go. In 1977 and 1978 we made a deal with the elders of that time that brought peace with honour. The issue was resurrected again and it is not over, because no sooner was the decision made or recommendation accepted by the Labour Government than the next claim was made and it is still there. That is why I oppose the Bill. The member for Southern Maori was good enough to say several times that the Bill is opposed by Ani Pihema and Ruby Gray, both of whom have put a tremendous amount of work---probably more than any other two people---into the marae for the benefit of the Ngati Whatua of Orakei. It is a confession of failure that the select committee did not bring into this Bill a provision that would satisfy their very modest aspirations. It is not a good Bill. It will solve nothing. It will merely perpetuate the method of solution that has not worked, is not working, and will not work. Unless we get to the point at which we can all say to each other that we are all New Zealanders the future for the country is bleak.

Hon. K. T. WETERE (Western Maori): The Bill establishes a very important precedent, which deserves bipartisan support for the future of Crown and Maori relations. I want to go away from the House tonight thinking that Parliament has given the Bill proper consideration. I want to go away from Parliament tonight thinking that the decisions made under the 1978 Act are inherent in the decision we make tonight. If we do not talk and try to wrestle with these outstanding issues in this way then, above all, I think that Parliament will not have done justice to something that we know had happened. We cannot continue to sweep those things under the carpet as though they had not happened. The record is clear about what happened at Okahu Bay and at Bastion Point. That we can never forget, but I should like to think that Parliament and the committee gave consideration to all of those factors.

I believe that Parliament needs to be congratulated and deserves to be congratulated on taking a Bill in its totality. I want to congratulate the Minister of Maori Affairs, who within 6 weeks of his appointment has reported the Bill back to the House. I should like to proceed with him to the Orakei marae tomorrow to present the legislation to the Orakei people finally. I believe that that will be a historic occasion. It deserves that consideration. I am sure that the people of Ngati Whatua will invite the Minister, and I would like them to invite the select committee to take part in a very historic

occasion.

More than that, the Bill lays the basis for future claims. The Waitangi Tribunal is not a judicial body. It was not established to be such a body, but a body that was impartial and outside judicial considerations and one to which anybody could go to make submissions. The tribunal does not escape claims, like the claim that is the subject of the Bill, made as far back as 1868, and all of those claims have given rise to the three royal commissions. The last commission in 1928 led to the establishment of the 12 Maori trust boards as we understand them under the Maori Trust Boards Act 1955. The trust board referred to in the Bill joins all of those trust boards, which came out of grievances with the Crown---not by private individuals but by misdemeanours of the Crown itself. This one is no different, so was treated in such a manner.

I say very clearly that I hope that what the member for Tamaki has said does not give rise to divisions among our people, and that we will learn to work together to try to understand those very vexed questions and what they mean. The decisions made by the royal commissions that I referred to earlier need to be considered. Some of those decisions are now being brought back before the Minister, because he has the power under the Treaty of Waitangi Act to receive those reports from the tribunal and to give consideration to them. They are important, and I believe that it gives an opportunity to those of our people who are not full-blooded Maori.

I confirm what the member for Tamaki said, that one would go a long way today to find full-blooded Maori people, although I am bound to say that there are still a few of us around, but they may not be Ngati Whatua. I assure the member for Tamaki that I am well aware of the genealogical ties between the Ngati Whatua people and the Tainui people. If one were to look at the genealogical ties between the common ancestor of Tuperiri and down through the Tainui people one would find that the relationship is so close that it is not even funny. So when we talk about this matter we are talking about ourselves as descendants of common ancestors, and we have rightly taken the step of including the decision of 1978 in the Bill. We agree that Tuperiri is the common ancestor of our peoples, so there is no difference in genealogical ties. I should be very surprised if the matter were to arise again, particularly in regard to the Orakei block, which we are dealing with, and if those kinds of considerations were brought up again.

In conclusion, the Bill implements the tribunal's recommendations, and, as I said earlier, vests in the trust board the Youthline community house site, as well as parts of the Housing Corporation land. Again, with it is an amount of about \$3 million granted to the trust board in 1988. That, too, is to assist the Ngati Whatua people to re-establish themselves on their own land. For the first time they have the right and the procedures to help them to develop what was formerly their land---and I say that in the finest way that one can at this time. For the first time this claim has been resolved in a fashion that satisfies all major interests---including the claimants---the tribunal, and both major political parties. Surely that vindicates the Labour Government's aggressive treaty policy. It will go down in the annals of this country.

IAN PETERS (Tongariro): I just want to say a few brief words.

First, I shall refer to the member for Tamaki, who called the Bill a sham and said that the select committee had erred in its work. I want to come to the defence of the select committee and to say that it worked hard and long. The Bill is not simple: it is really very complex, as, indeed, are most Maori issues. In recognising that, the committee spent a lot of time trying to work in and through the issues that confronted it. The select committee worked hard, long,

and exceptionally well to try to find a resolution that met not only the needs of the legislators but those of the Maori concerned.

I am also rather surprised that some Government members abstained from voting. I know that in this House one cannot always speak if one is opposed to a Bill, but this Bill is one on which all members had a right to speak if they so wished, and why members abstained and did not air their views in the House I shall never know. That is not my view of democracy.

One of the problems that the select committee faced was that it recognised a group of people in Auckland, the marae committee, which for 30 years had worked hard and long to build a pan-marae---a marae for the greater Auckland City. Funds were contributed not only from some Maori but from the city of Auckland. All made some worthwhile financial contributions to the building of the marae.

The committee tried hard to work into the Bill those people who had made such an outstanding contribution. Finally, it acknowledged that it was not possible, and much of tonight's discussion has been based around those two fine ladies, in particular, and their supporters. Nevertheless, I believe that what has been done is correct legislatively, and for that reason the committee decided finally that it could not do through legislation something that legislation did not allow. So tonight I again make the call to the Ngati Whatua o Orakei that it pick up those people, acknowledge them, and use them. If that were to happen I know that those of us on the committee who had our reservations for that reason will be more than happy, and we would praise the Ngati Whatua for it. They will all have the same.

I again thank the select committee for its outstanding work. I say to the member for Tamaki that the Bill is not a sham. It redresses a problem that has been seething for years. No one can stand up and say that he or she is a New Zealander without rectifying some of the problems of the past. This Bill addresses that problem.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): The Orakei Bill provides, among other things, for the recognition of rights secured to the Ngati Whatua o Orakei in relation to the Orakei block by the Treaty of Waitangi. Secondly, it repeals the Orakei Block (Vesting and Use) Act 1978, which implemented an earlier agreement reached by the Crown and the representatives of the Orakei hapu of Ngati Whatua. It provides for the re-vesting of further portions of the Orakei block in the Ngati Whatua o Orakei Maori Trust Board and for the extension of the trust board's functions and powers. Fourthly, it does not re-enact the provisions of the Orakei Block (Vesting and Use) Act 1978, which requires the trust board to pay to the Crown by way of equalisation the sum of \$200,000.

However, it does not solve entirely the conflict between some of the Ngati Whatua in that area. I hope that this debate, as recorded in Hansard, acknowledges what Professor Kawharu said in his earlier statement to the select committee, that once the title to the marae was returned to the Ngati Whatua o Orakei Maori Trust Board then it would set up a committee to attend to the day to day activities of the marae.

Professor Hugh Kawharu acknowledged the Orakei marae trustees---who had also been called inaccurately the Orakei marae reserve trust board---for their significant and substantial contribution to the marae as it is today, for they are not specified in the Bill. That is the issue that the select committee spent literally weeks and several hearings on. How could we do justice to the people who had designed the marae, raised the funds from the whole community, and constructed the marae as it is today from a paddock? I would object if they were excluded, because their efforts, as volunteers, have created what is the substance of the marae today.

I am hoping that the record of this debate will, in fact, wake the conscience of the administrator set up under the Bill to the fact that those two people must continue to be recognised. They must not be rejected. They must not be jettisoned because the Bill now makes the entire tribe the repository---through their elected representatives---of the control and title of this area. The work of the Orakei marae trustees, to whom I have referred, and one of their subcommittees, the Orakei Marae Centre for Education and Cultural Exchange Inc., has been led, in effect, by Ani Pihema and Ruby Gray---who was once a secretary to members of Parliament---and other women who have now passed on. Their voluntary labours established the marae. May they long be remembered, and may those who survive be appointed as administrators of the marae. Once the legislation is enacted let their contribution not be forgotten. I would not be satisfied if they were now forgotten.

Reference has been made to them as having conducted good deeds. An official statement goes like this: ``However, the issue here is not about good deeds but whether the Ngati Whatua are to control the marae.''. The issue is not just about who built the marae, and more than just ``good deeds''. That is a fatuous comment, which I believe does no credit to some 30 years of effort by a voluntary committee.

Ani Pihema's submission pointed out that these two committees did not receive credit or recognition in the Waitangi Tribunal report on Orakei, but our select committee pays them every recognition. The member for Tamaki referred to the undoubted fact that there were waves of conquest, and asked what date one decides on to give recognition to the tribe of the last conquest. We have no other date to go by but the genesis of this nation in the Treaty of Waitangi in 1840. There is no doubt that at that stage the paramount chief of the Tamaki Maori was Apihai Te Kawau, the grandson of Tuperiri, who was the first Ngati Whatua leader and chief to come down to the area. Indeed, he conquered Kiwi Tamaki of Waiohua, who was the chief of the area in 1740, so I suppose that information goes back far enough to satisfy the member for Tamaki in the question he asked.

The descendants of both Tuperiri and his grandson Apihai Te Kawau are the main actors today---Professor Kawharu, Piriniha Rewiti, Ani Pihema, Hapi Pihema, the Rameka, Tumahai, Tamariki, and Hawke families, of whom the most well known is Joe Hawke; and Rangiaho Puriri, and Ruby Gray, one of the women to whom I have referred, who also descends directly from that line. They are still involved but they do have this difference.

The difference will be resolved if they recognise those women who built the marae. Then I will be satisfied that the honour with which we challenge the new committee administering the legislation will, I trust, be honoured. I believe that I can expect this of Professor Hugh Kawharu, and certainly Ruby Gray, who is now the chairwoman of the committee set up under the Bill to administer the lands. To the extent that it is able the Bill redresses a past injustice. But of course the subject may well come up again. Who knows! I do hope that the settlement that has been established by the legislation will be honoured to a reasonable extent and not to the detriment of future good race relations.

SONJA DAVIES (Pencarrow): I want to outline some of the work done by the Orakei Marae Centre for Education and Cultural Exchange Inc., because it was a very important part of consideration of the Bill and relates to some of the problems that we had. In view of the comments made by the member for Tamaki and the statements of the Waitangi Tribunal---one of my arguments with the report of the Waitangi Tribunal was that it wrote off that centre as do-gooders---I want to tell the House about some of the important things that it has done. The educational centre has always worked in co-operation with the



Maori trustees, who delegated to it the task of fund-raising and required it to account for the funds raised to build the Orakei marae. Those funds were raised. The centre was also charged with the job of maintaining the marae and its buildings. That is quite a daunting task, particularly when it is done voluntarily. The centre has had a large number of voluntary workers, both Maori and pakeha, and that has been an invaluable ingredient from the beginning.

It is interesting to look at some of the activities carried out by the marae educational centre. It began its activities in 1962 when it was sponsored by the Maori Women's Welfare League. It has operated with the co-operation of European women of good will in the Auckland area. I know that both the marae in my electorate---the Waiwhetu marae and the Pukeatua marae---welcome the participation of pakeha in their community. The Orakei marae and the educational centre are to be congratulated on being a front runner in partnership.

The first building was the kohanga reo, and I think that that was quite significant. A playcentre was established as well, with the help of Lex Gray. Each year about 41 young people are helped financially to achieve educational skills. We are always saying that young people have to achieve greater skills, and here it is being done by volunteers. A bursary fund was set up in 1972, and from that date until 1979, 256 students were assisted---some for 4 years. That is a real achievement. Between 1972 and 1991 a number of marae students were supported, and they graduated in the arts, science, commerce, law, and the social sciences. Libraries were established with the help of the Auckland Public Library. There was co-operation from local schools, the education board, the Tamaki Lions Club, and a good many others. It was a good co-operative venture.

Some very prestigious people donated to the work of the educational centre. The Todd Foundation, the Sutherland Self-Help Trust, the ASB Charitable Trust, the J. R. McKenzie Youth Education Fund, and the Maori Education Foundation all contributed to the work of the education centre. We heard in the submissions about all the work that was done. I am absolutely certain that Ngati Whatua has many talented and caring people among its ranks. It is a fact that no one has a monopoly on education, but I am equally certain that the experience gained by women such as Ani Pihema and Ruby Gray, and their courage and determination, are a very valuable resource for the young people who come after them.

I wanted to tell the House about some of the activities---cultural and educational---that have been part and parcel of the work done on this marae for 2 decades, because we hear so much about all aspects of young Maori people that is negative and depressing. It is a shame that the work done for them and by them on this marae---as, indeed, on a number of other marae around the country---is not acknowledged. It is obvious from the stature of the contributors that they had a high opinion of the work being carried out.

I agree that the select committee could not resolve the differences that still prevail. I do not agree with the member for Tamaki that we could have found a legislative way of doing that. It was just not possible. I think that it is fair to say that had we been able to find a way through the problem we would have grasped it, but it simply was not possible. The history of this marae is one of co-operation of the sort that never makes the headlines and that most people know nothing about, though it is the kind of work that can change attitudes in the community and can change lives for the better. Lastly, I want to pay a very real tribute to Ani Pihema and Ruby Gray---pioneers in partnership. Bill read a third time.

Treaty of Waitangi Amendment Bill (Introduction and First Reading)

TREATY OF WAITANGI AMENDMENT BILL

Introduction

Hon. DOUG KIDD (Minister of Fisheries): I move, That the Treaty of Waitangi Amendment Bill be introduced. This is a small but very important amendment to the Treaty of Waitangi Act 1975. Quite simply, it will prevent the Waitangi Tribunal from making recommendations that the Crown acquire the ownership of any privately owned land, or interest in land held by any person. The Bill will thus put beyond doubt the question of whether the tribunal has the jurisdiction to make recommendations in regard to private land.

There is no question of tampering with the general role and philosophy of the Waitangi Tribunal. It remains as the tribunal charged with the important task of inquiring into, and making recommendations to the Crown on, treaty claims by Maori dating back as far as 6 February 1840. What the amendment does is clarify a very narrow point that arose in the Te Roroa report of April 1992 when a division of the tribunal recommended that the Crown purchase certain private lands involved in the claim. Until that particular report, the issue had not arisen.

A claim to the Waitangi Tribunal and its eventual settlement is a matter between the Crown and Maori. Under section 6 of the Treaty of Waitangi Act 1975, a Maori can make a claim if he or she has been prejudicially affected by some activity of the Crown. If the tribunal considers a claim to be well founded, then a recommendation to the Crown that certain Crown land be applied to redress the claim is easily explainable in terms of the treaty relationship, because the Crown has control over Crown-owned land.

However, a recommendation that the Crown take certain action in relation to privately owned land is quite another thing. Private citizens also have rights. Indeed, they hold their tenure from the Crown, and they are entitled to look to the Crown to protect those rights and that tenure. A fundamental principle of the treaty claims settlement process that is accepted on all fronts is that one injustice cannot be addressed by creating another.

The Waitangi Tribunal must be commended for the excellent work it undertakes in relation to claims. It provides a forum and a focal point for Maori to air their grievances, many of which go back to the very foundations of our nation. The tribunal also increases the level of public awareness of the background of the claims that are being heard. In many ways the tribunal is writing the real history of our country.

I can confirm the commitment of the Government to the tribunal process for receiving, considering, and investigating claims, and for bringing them in a coherent form to the Government for Government action to resolve. It must be remembered that this Government has made a strong commitment in regard to the treaty, as the quite startling achievements of the Government in settling claims since it came into office make evident.

The introduction of this tiny amendment will not adversely impact on the ability of the Waitangi Tribunal to operate as it does at present. Indeed, the amendment is necessary to protect the status of the tribunal and its acceptability to the people of New Zealand as a whole.

I would like to make it clear that, although the tribunal will no longer be able to make recommendations in respect of privately owned land, it can still make recommendations in relation to land, or interests in land, that is owned by the Crown; transferred to a State-owned enterprise under section 23 of the State-Owned

Enterprises Act 1986; transferred to an institution within the meaning of section 159 of the Education Act 1989; or, finally, owned by the Crown and is now vested in a Crown transferee company under section 6 of the New Zealand Railways Corporation Restructuring Act 1990.

The Waitangi Tribunal can also make recommendations---indeed, binding recommendations---relating to licensed land, as it is called, within the meaning of the Crown Forest Assets Act 1989. That, of course, is land that used to be known as the State forests, all of which has since been corporatised, and much of which has been privatised.

I want to add one or two additional comments. I mentioned the importance of this amendment to the integrity of the treaty claims settlement process. I believe that the outcry following the Te Roroa report was such---and the fears raised were of such genuine concern---that the question of the treaty settlement process itself might well have been at risk. That would serve no one's interests---not those of Maori, the Government, or the people of New Zealand as a whole.

The amendment---and I think that I can submit it in advance as being in the running for the smallest Bill of the year in terms of number of words---will make absolutely plain to all New Zealanders, whether they own land, whether they lend money on it, or whatever their relation might be to it, that private land is sacrosanct and totally excluded from the treaty claims and settlement process.

All New Zealanders can get on with their business, be it in relation to their land or otherwise, in total confidence that that will be the law, and that they will not have to rely on what has always been the clear and unequivocal policy of the National Party, which is that private land is not available for treaty settlements. I understand that that policy had its exact counterpart amongst Labour Party policy when it was in Government. The policy of the parties, clearly expressed many times, will be written into the law, and I hope that the Bill will be passed into law speedily. I recommend that the Bill be now committed to the Maori Affairs Committee for its consideration.

Hon. K. T. WETERE (Western Maori): I suppose that the area of interest in the Minister's introduction speech concerned the protection of private landowners and his saying to them that the provisions of this small Bill would protect them for ever. That is the status of the tribunal right now.

I question the real validity of the Bill. It seems to me quite clear that it is to help the Minister and the rednecks who, by their own admission, created the hype about the Te Roroa case when they ought not to have done. There was a blatant case of the Crown's misdemeanour. It is as simple as that. The Bill will not stop any of that, because, as the Minister said, the tribunal simply makes recommendations.

I simply want to ask where this House is getting to. It has asked, in another form, that justice be provided to our people, then it takes that away. Why not just take this matter to the tribunal? It would have been just as easy to walk across to the tribunal, even to have written a letter to it, saying: ``Look fellas, this is not on!'. But the Government could not do even that.

So, to win public support---in spite of the generosity of our own people in listening and in providing the vehicle for cases to be heard---the Government wants to do it this way. One has to ask about the validity of bringing legislation of this kind before the House. My word! If there were a decent Whip here one would not even see it, and one would have to ask what its real purpose was. I tried to work

that out.

Quite frankly, the tribunal will continue to make recommendations to the Government, or to any Government for that matter.

Sitting suspended from 5.30 p.m. to 7.30 p.m.

Hon. K. T. WETERE: Before the dinner adjournment I was canvassing the need for having the Bill. As I said then, it is conceivable that the Minister could easily have gone to talk with the tribunal, reordered the method of considering the cases that come before it, and ensured that there was a case to be heard against the Crown---not against the private landowners, as in the situation alluded to. Nowhere in the considerations of the previous Government, or even of the Opposition, as the Minister indicated, was or is it intended that private land and private landowners be considered in the equation.

I say to the Minister of Forestry that there is no doubt about where the responsibility lies. Section 3 of the Treaty of Waitangi Act is very clear about the partnership between the Crown and Maori---and it is simply that.

The second point is that the importance of that section was to consider a recommendation. The Crown need not have taken, or does not really have to take, cognisance of any recommendation, but it is simply another form of our people having an opportunity to hear a case that could not have been heard in a judicial situation, such as the High Court---or any other court for that matter---because in these proceedings the tribunal is not considered to be a judicial organ as such. I want simply to say that to reorder the way in which the tribunal went about hearing the cases is in my view an important aspect. Therefore I have to question the need for this Bill.

As the Minister said when introducing the Bill, it was important to allay the fear; to state that the acquiring of private land would not take place. As I said earlier, the Te Roroa case was a classic example, but in that situation the Hon. Mr Justice Acheson in 1942 made it very clear what areas of land were set aside by that court and were later sold by the Crown. That was the total sum or the essence of that case and the reason that our people took a case to the Waitangi Tribunal. Where was the fault? It was not the fault of the private landowner; it was the fault of the Crown. Therefore the case stood.

But, of course, the tribunal went further. During the introduction of the principal Bill way back in 1975, and again in 1984 and 1985, when the amendments were made to it---namely, the expansion of the tribunal---it was made very clear by the Government of the time that nowhere in the equation was private land ever to be considered.

Yet here we have before the House the question of protecting, I suppose, the so-called rednecks who brought about the heightened debate at the time that the case was being heard in Northland. I simply say that the previous Government certainly had never bought any of that. It did what the present Government has tried to do---that is, to settle the question on those areas in which there was an infringement or error on the part of the Crown.

I simply want to say---

John Carter: We did; the previous Government didn't.

Hon. K. T. WETERE: Hang on a minute. The previous Government made it possible for that to happen. This Government has not changed anything. The Bill will not change anything, either. It is like the Sealord Products deal. How can the Government bring in a law that states: ``You cannot do that'', when it is not known whether that may well happen some years down the track?

I tell the member for Bay of Islands that there was a case involving Maori land even in Awhitu up in the Manukau Harbour, made by the Crown at the time, in which land was given two titles. Our people were not to blame for that---and this case was several years

later. Who is to know that that will not happen again?

I would like to think that new technology might allay some of those fears and the sorts of claims that may be brought. But the underlying essence of my contribution to the introduction of the Bill is to allay any fear that a Labour Government would have any intention of encroaching on private land. There is no way that the Opposition would ever say that. As we said before, that was a question that would not be considered by us or even by the tribunal.

I simply want to say this---

Jeff Grant: What does the example of the two titles have to do with this piece of legislation?

Hon. K. T. WETERE: Because the Crown had erred.

Hon. Doug Kidd: That's ancient.

Hon. K. T. WETERE: That is exactly the point I am trying to make: that it may well arise again some time down the track, whereby the Crown had made a mistake some years ago---

Jeff Grant: No.

Hon. K. T. WETERE: I am trying to say to the member, if he would listen, that in the Te Roroa case in 1942 the Hon. Mr Justice Acheson set aside reserves within the area of land that is under discussion. That was a Crown action. That was not an action by a private landowner who happens to be the owner now or was the owner at the time. That is the area that comes into conflict, and I say that one cannot blame the private landowner. It is a question, as we have said under the legislation, to do with the Crown. It involves that partnership. I do not think that either party disagrees. In fact, I know that the Minister shares the view.

I support the Bill's going to the select committee and to a hearing for those guys who will come down and make submissions. However, I think one could have gone along to the tribunal without making any great overtures and could have said that there is a way to deal with these cases. There is the question of discretion in how a case can be ordered, and how a case can be heard. In my view that discretionary power under section 6(3) of the Act has not been used prudently by the tribunal, its executives, or its officials in order to hear the case. That discretion is still there and I think that is where the Te Roroa case went wrong, quite frankly---

Hon. Doug Kidd: They went over the top, didn't they?

Hon. K. T. WETERE: I am trying to say that---OK? I see no need for this amendment, quite frankly. It is so minuscule that it could disappear without any great difficulty.

IAN PETERS (Tongariro): The member for Western Maori indicated before the dinner adjournment that he was concerned that the Treaty of Waitangi Amendment Bill was being introduced into the House because of the rednecks in the National Party. I want to remind the House and members of the Labour Opposition that, in fact, one of the Labour Prime Ministers in that 14-month period---

Hon. Doug Kidd: Which one?

IAN PETERS: It was the member for Mangere, who gave the country an assurance that no privately held land, having been subject to a claim under the Treaty of Waitangi, could be handed back to the original claimants.

Hon. Peter Tapsell: He didn't say that at all.

IAN PETERS: He did; he said it in as many words. I believe that the country at that stage was prepared to believe the leader of the Labour Government, and I say tonight that there is a need for a Bill like this because out there in the real farming community there is grave concern that the Waitangi Tribunal, having proceeded into making other recommendations---in particular, with the Te Roroa settlement that it presented to the Crown---made other observations.

The Bill has come about because the Government has recognised that

there is a real need out there. Certainly, there is grave uncertainty among New Zealanders that what they believed was theirs---that is, land or property purchased, with privately held titles---could at some future date be taken from those owners. That certainly would be a disaster for this country, for the Government, and, in particular, for Parliament. When the Bill is returned from the select committee, and during further stages, the Labour Opposition will have an opportunity to give it its approval, or otherwise.

I suggest that the redneck claim is not correct, although it is obvious that there are many people who, if driven in certain directions, would certainly give that appearance.

First, the Bill in no way prevents the Waitangi Tribunal from making recommendations. The Bill states that the words ``the Crown acquire ownership of any land or interest in land held by any person'' cannot be part of a Waitangi Tribunal recommendation. The Bill does not tamper with the general role or the philosophy of the Waitangi Tribunal. The Waitangi Tribunal has never had the ability to take back land that was privately owned and to return it to the claimants if they could prove their case to be valid.

I say tonight that it is an indictment on our parliamentary system, and it is also an indictment on both political parties, that Maori people who have come to the Crown on many occasions with legitimate claims have been told to go away, and today we are faced with the awesome problem of trying to settle grievances that should have been settled many years ago.

I repeat what the Minister said, that the Bill does not tamper with the general role or the philosophy of the Waitangi Tribunal. I commend the Waitangi Tribunal for the great work it has done during the years, but in April 1992 when it produced the Te Roroa report the recommendation was not acceptable to the Crown. There is a need to define clearly what the position of the Waitangi Tribunal is, what the requirement is, and what the Government would expect of it. Therefore this very short Bill is presented to the House tonight in an endeavour to do that.

The claim---and this we must remember---to the Waitangi Tribunal, and its eventual settlement, is a matter between the Crown and Maori. The Waitangi Tribunal acts, if one likes, as the middle person in hearing a claim, and it presents its findings to the Crown. While I have already commended the Waitangi Tribunal for the great work it has done, the Bill confines its ability to make recommendations. I think that the Bill will clear up many of the misconceptions---some real, but most perceived to be real.

However the Bill is perceived, it does settle the minds of those who have freehold land, particularly in the rural community, that they will be able to continue to perform the duties that they have chosen as their lifestyle.

The Te Roroa case in particular is a very difficult one, because there is no doubt that those Maori groups do have a claim on that land. One of the shames of it all is that the case has gone so long and so far, to the point at which a community has been torn apart by what is a legitimate claim. I say to the House and to the country that the Maori do have a legitimate claim on those reserve lands that were theirs, and that somehow the title has been mixed with that of private ownership.

Having said that, I point out that that case is rare; it is not common to the Waitangi Tribunal claims.

There is a fourth reason that the Bill is so important. There are people in the community who have paid good money to become farmers or lifestyle property owners. Right now their commercial investment is in question because of the doubt about whether they have real ownership. According to the law of this country certainly they have

ownership, but the perception is that the claimants, if they can prove their case to be correct, do have some claim on the property.

We need to spell out very clearly to the House tonight, in particular to the Labour Party, that they all have a right to make a claim. However, if they can prove a valid claim on property that is now privately owned they cannot have expectations that that property should, or can be, returned. It may be returned if the Crown can work out some kind of settlement, but Maori people need to be told about it again.

I believe that the words of the former Prime Minister, the member for Mangere, were quite correct. He was very brave and quite correct in informing the country again that private ownership was not in question. I am delighted to speak as a second speaker on the introduction of the Treaty of Waitangi Amendment Bill.

Dr BRUCE GREGORY (Northern Maori): I rise to speak on the introduction of the Bill, which has been termed the ``Treaty of Waitangi (Private Lands) Bill''. I could not help but think that in the very title of the Bill there is an ambiguity or an anomaly.

In actual fact the Treaty of Waitangi does not in any way embrace anything that deals with the question of private lands, or anything private. In essence, it is a facet of communal existence, which is part of the Maori environment and domain and therefore inherent within the term ``Treaty of Waitangi''. I believe that the moment that something is brought in that is individualised in terms of, for example, European concepts, a problem has been created.

That is the first matter I want to bring to the House, because I noted a parallel in another Bill, which dealt with fishing. The Sealord Products deal introduced what has been termed the ``Treaty of Waitangi Fisheries Commission'', and that is a similar anomaly. The difficulty, of course, is that most members of the House are perhaps familiar with one set of values that is very much part of the environment in which they have been brought up. The terms ``individual rights'', ``individual excellence'', and ``individual ownership'', are very much the essence of that world.

But those members must also realise that in this particular area, when they are dealing with the considerations of Maori people, they must understand the other dimension, which is very much part and parcel of that important historic document, the Treaty of Waitangi, which was signed in good faith between the British Crown at that time and the representatives of the Maori people.

I commence with that particular reference because it is germane to the debate that faces the House on the Bill's introduction. It is one reason that I do not agree with the very substance of what this Bill states.

I come back to the factors that are involved: first, the Waitangi Tribunal; and, second, the Te Roroa people of Northland. I should like to say briefly to the House that the Te Roroa people are a tribe that was very powerful in its day. Some would say that those people are an amalgam of Ngapuhi and Ngati Whatua. I do not claim to be an authority on that matter, except to say that they were certainly a force during that time in that area.

It would appear that with the passage of time, and with the introduction of an alien society amongst them, for some unknown reason the Maori Land Court became involved in relation to reserve lands in that area. I understand, and I think that the evidence did confirm, that the land was taken from Maori people through a misunderstanding, perhaps by the Crown---and I use that word advisedly---and was given to other people.

The Te Roroa people were never happy with that situation, and I know that they took it to several Governments at various stages in the history of our parliamentary system. They got no satisfaction

until the Waitangi Tribunal was approached, to examine and to research the very issue of the Te Roroa people and reserve lands in that area.

The Waitangi Tribunal is an instrument that certainly was begun by a Labour Government, and it should take credit for it. But the important thing is that that Government initiated a mechanism to advance the course of our nation by providing a vehicle that ultimately led to the formation of a tribunal that currently has an equal number of pakeha and Maori representatives or commissioners on it. I understand that its numbers have been increased to 17 eminent people who have expertise in Maori law and Maori language, as well as expertise in European law and in land in the various contexts of our dual society.

The tribunal was also charged with examining cases that went back to 1840. That, of course, led to considerable concern and debate, and I believe that it was a step in the right direction. The extension of the ability of the tribunal to examine not only post-1975 cases but also post-1840 cases, which period includes the largest number of grievances concerning Maori people, has resulted in a good many cases being brought to the fore and coming before the Waitangi Tribunal. The tribunal has examined many cases.

Of course, in the case of the Te Roroa claim the tribunal recommended that private land in that area, which it believed was wrongfully taken---not by the ``current owners'' but by the Crown during its deliberations in the past---should be given back to the Maori people in that area.

It behoves us to examine further the relationship between people and their land. I am not saying that the relationship of Maori people to their land is a very personal situation; it is not peculiar to Maori people. Other nations have similar philosophies in relation to their land, but, certainly, for Maori people their relationship with their land is a very close situation indeed. In other words, they almost treat the land that has been handed down to them from generation to generation, from tupuna to tupuna, as something that is part of their soul and of the very fabric of their being.

That is the crucial thing in respect of the matter of private land. If people are saying that private land must be exempt from the rigours of the Waitangi Tribunal's examination, the very substance, the very philosophy, and the very reason for the existence of the Waitangi Tribunal become a nonsense. Basically, its purpose is to attempt to justify and rectify what are considered as injustices and grievances, which may have been done purposefully or may have been done with good intent because people at that particular time thought that they were in the best interests of the people.

The facts are brought under examination, and in this case they were found wanting. The Waitangi Tribunal recommended to the Government that private land that no longer was in Maori hands should be returned to Te Roroa people. I believe that that recommendation was correct, proper, and right. It appeared from examination of the record of the history of that land that the fault lay with the Crown. It appeared that the Crown had a responsibility---as the tribunal recommended---and that that land should be obtained and should be returned to the original Maori owners, who have been the sufferers as a result of the original decision.

Those people had to leave the area. The living that they could have accrued from planting kumaras or trees, and from fishing off the nearby shore---all aspects of Maori life---was denied them because of decisions that were made with regard to their land many years ago. That in itself was an injustice. Those people lost the opportunity to acquire adequate education; they lost the opportunity for fruitful utilisation of their land; they had to leave the area in which they



were born and in which their history resided; and they had to live in other parts of the country.

In some cases that land has been lost to them forever. In some cases a grievance has been left. I believe that the response to the Waitangi Tribunal recommendation certainly was something that we could justly be proud of.

JOHN CARTER (Bay of Islands): One wrong cannot be rectified by creating another. This House cannot rectify one wrong by creating another, nor should this House or this nation create obstacles in our endeavours to settle the claims that are before us. The previous Government and this Government gave an assurance to the nation that private land would not be taken forcibly to settle land claims. In this nation private ownership is sacrosanct. There can be no forcible acquisition of private land. Right now, this country needs an assurance that private land is secure. This nation needs an assurance from this Government and from this Parliament that private land is secure.

Hon. David Caygill: Who says it isn't?

JOHN CARTER: The fact that the Waitangi Tribunal recommended that the Government acquire privately owned land to settle Te Roroa claims created the perception in the minds of many New Zealanders, particularly rural New Zealanders, that the Government would forcibly take privately owned land to settle claims.

Hon. David Caygill: Dispel that perception. It's clearly wrong.

JOHN CARTER: Whether the Opposition wants to believe that that perception exists or not, it is a reality in the minds of many people. As much as the member might wish to dispel it---and he might take a call to endeavour to do so---nevertheless, many people want to know that they have legal security and that they have the backing of this Parliament. Words are just not good enough. They want to have laid in law that the Waitangi Tribunal cannot recommend the acquisition of private land to settle claims by force. That is what this Bill addresses.

There have been many misunderstandings about how claims are lodged. People ask me---and I am sure that they ask many members---why their piece of land is included in a claim. When one sits down with them and tells them logically that where a wrongdoing took place it has to be identified, they start to understand. They understand why there has to be definition with regard to the claims. But they are still concerned that the Government could come along and forcibly take that land if the Waitangi Tribunal suggested that that should happen.

Hon. David Caygill: It hasn't got the power to.

JOHN CARTER: Of course we have not got the power to do that. The fact is that the Bill will cement that fact in the minds of this nation. People will feel more secure. The whole purpose of the Bill is to take away an obstacle so that we can get on and settle past injustices. We need to have the support of the people of this nation, both Maori and pakeha, to settle the claims. The Bill will help us to proceed to settle some of the injustices that have been done in the past.

Hon. David Caygill: The member for Bay of Islands cannot possibly believe that.

JOHN CARTER: Well, I do believe it. I believe that right now the people of this nation are concerned that their land might be taken from them, and that is an obstacle to our being able to sit down and settle the claims calmly and logically. Many injustices have been done; many need to be addressed and will be addressed. This Government at least has made progress in that regard, unlike the previous Government that did not do a lot with regard to settling the claims.

However, the Te Roroa recommendation of the Waitangi Tribunal unfortunately has threatened logical settlement of the claims that are now before this country. We need to be able to address this matter. We need to give security to the people of this nation.

Most people, when one talks to them about injustices, quite readily accept that there have been problems that need to be settled. In the Ngai Tahu case, 30,000 acres at Akaroa was sold. Ngai Tahu did not receive any money, but the buyer, the Government, got the land. There was a breach of contract, and most people would say that that was wrong. In the Ngai Tahu case, millions of acres of land were bought by the Crown, which was the only possible buyer. At that time, the Crown paid 7800 for millions of acres. Analysis today shows that a fair price at that time would have been 2.1 million. The Crown paid 7800. When one cites those examples to the people of this nation they say: ``Yes, there have been injustices and we need to deal with them.''

This Bill will allow us to continue down the path of settling those claims as they are brought to the attention of the nation, but we must not and we cannot take away private land from the people of this nation to settle those claims. There are other ways, and there have been other ways, to settle those claims successfully. I say again that we cannot create another wrong to fix a past wrong.

Hon. David Caygill: No one says the member should.

JOHN CARTER: Absolutely; no one says that we should do that. No one in this Government and no one in Parliament is saying that, but I must say that, unfortunately, the people believe that maybe that will happen.

I have listened to tonight's addresses by Opposition members, and some of them have been saying that this matter should not be put into law because we could not guarantee that it would not happen in the future. Are those members saying that if ever the Labour Party becomes the Government, which is unlikely, a Labour Government would change the law so that private land could be taken forcibly? Is that what Opposition members are telling the House? If that is the policy of the Opposition it should be spelt out clearly. [Interruption.]

Well, I have to say that those are the vibes that seem to be coming from that side of the House. Those members are suggesting that maybe a Labour Government would alter the law that is being enacted at the moment so that private land could be forcibly taken.

Hon. David Caygill: Nobody has said that.

JOHN CARTER: Well, go back and look at the Hansard of some of the previous speakers; it will be inferred that that might happen if members opposite ever become the Government.

Never under this Government will private land be taken forcibly to settle past injustices. This nation needs to know that. I want to spell out very clearly tonight, as will other speakers on this side of the House, that this Government will never tolerate anyone forcibly taking privately owned land to settle past injustices. There are ways, there have been ways, and there will be ways, in which we can settle claims for past injustices. There are many ways in which we can settle down and negotiate our way through the difficulties of the past.

I would not like to think that, as a result of the debate tonight, there was any suggestion from anyone in this Parliament---

Hon. David Caygill: No, there isn't. There never was, and this Bill doesn't help.

JOHN CARTER: I remind Opposition members that they should be careful about how they address the issue.

Hon. K. T. Wetere: We've been very careful.

JOHN CARTER: I must say to the member that I do not believe that he has been careful enough, because the words that came from his very

mouth suggested that in the future this legislation might be changed and that privately owned land could be taken forcibly---that was the implication.

This Government will not allow that to happen. This Government wants the people of the nation to know that their privately owned land is secure. The Bill will secure the privately owned land of this nation so that it cannot be taken. It will ensure that the Waitangi Tribunal cannot recommend the taking of any privately owned land---as happened in the Te Roroa case. The people of this nation can rest easy. This Government, this Parliament, will negotiate with claimants to settle past injustices so that together we can forge a nation that is a better place for each and every one of us to live in.

Hon. PETER TAPSELL (Eastern Maori): The Opposition will not oppose this Bill's being referred to a select committee, but I want to make clear from the outset that I do not support the Bill. It seems to me that it removes from the tribunal the ability to make one possible and perfectly legitimate recommendation---namely, that in settlement of a Maori claim the Crown could attempt to acquire---from a willing seller---land that it would return to Maori people. The Bill prevents the tribunal from making that recommendation.

It seems to me that the Bill has been introduced as a desperate election-year ploy to satisfy or to assuage the views and concerns of two groups of people. First, there is the group that has always opposed any settlement of Maori claims---the rednecks. Second, there is that group---of which, I am bound to say, I fear that the member for Tongariro and the member for Bay of Islands are two members---of people who do not understand either the powers and functions of the tribunal or the responsibilities of the Government; those people do not understand either.

It has always been clear that the tribunal has no power other than to make recommendations. It has been equally clear, and made clear by successive Governments, that the Crown would not at any time forcibly take in settlement of Maori claims land held in fee simple. That has been made perfectly clear.

The Bill removes from the tribunal the right to make what might be a perfectly reasonable recommendation with regard to settlement: that the Crown attempt to acquire a piece of land for return to Maori people. It has been clear always that that acquisition of land would be from a willing seller. The Bill does nothing in relation to the responsibilities and powers of the Government with regard to land under claim before the tribunal.

I cannot support the Bill. I cannot imagine what possible reason there was for bringing the Bill before the House except as a desperate measure to assuage the concerns of the rednecks and those who know nothing about the powers of the tribunal.

I shall say a word about the land in the north that I suspect has led to this, and about which I have some knowledge, having formerly been Minister of Lands and having investigated the matter thoroughly.

There is a block of land that the Government acquired from willing sellers many years ago. The sellers at the time made it clear to the Government that there were two reserved areas that they did not want to have included in the bill of sale. When the documents were finally completed it became clear that the sale and purchase agreement had included those blocks of land in the total sale.

The Maori people, Te Roroa, objected and took their case to the then Maori Land Court in Whangarei, which found in favour of Te Roroa. Subsequently, and for no obvious reason that I could find, the Maori Appellate Court overruled the Whangarei Maori Land Court. No new evidence was presented to the court, nor did the Appellate Court ever give any indication of why it had overruled the court in Whangarei. It simply overruled that court by a stroke of the pen.

Te Roroa, of course, objected to that, and have objected over many years. In my opinion, they have acted with great restraint and with remarkable responsibility concerning that measure. They have had great patience. The matter has been brought before every tribunal available to them, and in every way they have made their case clear, asking that the two reserves that were initially set aside be returned to them as reserves.

A European farmer---a man called Titford---chose to purchase one of the areas of land. I say now, having investigated that area thoroughly, and having walked over the farm and spoken to that man, that he is a shyster of the worst sort. He knew very well when he purchased that farm that claims were lodged against it by Te Roroa. He denies that now, but, if he did not know, he is the only person north of Auckland who did not know there were claims against that land.

Having acquired the land, he immediately set about taking the most provocative measures with regard to Te Roroa. He arbitrarily bulldozed a hut that people had had there for many years. He blocked the road. He indulged in fighting with the Te Roroa people: at one stage he was arrested by the police. Te Roroa have never been arrested by the police, but he was.

Subsequently---immediately afterwards---he chose to attempt to deal with the Government and to make what were exorbitant claims with regard to his farm. As Minister of Lands, I offered him what I thought was a fair price, plus some. I would be very sad to hear that the Minister of Justice is offering him anything like the sum of \$2 million, as is suggested in the newspapers. That is many times greater than what that land is worth. As a farm it is run down, with broken down fences, practically no stock, and neglected pasture.

He is simply holding the Government to ransom, and if the Minister of Justice, as the Government's Waitangi Tribunal negotiator, agrees to any blackmail of that sort then I shall lose my respect for him. The sum is many times more than what I suspect the farm is worth, which is \$120,000 to \$130,000, no more. If the Minister agreed, it would be a pity and would do great harm to New Zealand.

I am bound to say also that it is clear that Mr Titford has not the financial ability to have maintained what he has done. He has been taking nothing off the farm. Earlier there was an utterly ridiculous claim before insurance companies for the burning down of an old shack that was subsequently found and withdrawn, for very good reason, on which I will not comment.

Mr Titford is not deriving sufficient income to have carried on the programme against the Government that he has done. He is clearly being supported by some group---I suspect that it is one of the far Right groups that live in and around Auckland City. Clearly, he is being supported financially by groups of rednecks that have egged him on to attempt to embarrass the Labour Government and this Government to the very limit.

The Government ought not to accede to that. The Government ought not in any circumstances to accede to what I suggest is straight-out blackmail. Mr Titford has no intention of settling with the Government, and will simply string it along to the end by embarrassing it and by hoping to engender a growing sense of hate against Te Roroa people when Te Roroa have nothing to be ashamed of.

Te Roroa people have acted responsibly from start to finish. They legitimately took their claim to the court: it was agreed to but the appellate court overruled it. Several times, through every avenue available to them, they have made their case responsibly and reasonably up until now. The Government ought not to accede to blackmail. It ought not to accede to the troublemaking of a shyster. It ought to have greater concern for the concerns of Te Roroa.

I am hopeful that, if nothing else, before the select committee the powers and the responsibilities of the tribunal and the powers and responsibilities of the Government are made clear to the member for Tongariro and the member for Bay of Islands, because it is clear that those members are aware of neither.

The tribunal has powers only to make a recommendation, and it seems to me to be an eminently reasonable recommendation that in settling the claim the Crown seek to acquire from a willing seller a piece of land that it would then return to Maori people. Nothing could be more reasonable than that, and this clause simply prevents the tribunal from doing that.

If in fact the tribunal at any stage stated that the Crown ought to acquire land compulsorily, or that it ought to acquire it at any price, then the tribunal has no right to say that, and the Minister ought to tell it so.

JOY McLAUHLAN (Western Hutt): I am thankful to hear that the former Minister, the member for Eastern Maori, is not proposing to oppose the Bill's referral to a select committee, and that is very good. It may be that by the time the Bill gets to a select committee he will also not be opposing the Bill's being reported back to be followed through in the logical course of events. That was a very useful indication.

The Bill is a very small Bill and amends the Treaty of Waitangi Act 1975 so that the Waitangi Tribunal cannot bring down a recommendation to acquire private land. Opposition members have repeatedly said tonight that there is no way that the previous legislation has enabled that to happen. But it did happen. It happened after the Te Roroa report came down, and, admittedly by a division of the tribunal, it was stated that the Crown should acquire private land.

Hon. David Caygill: But not compulsorily.

JOY McLAUHLAN: But the perception was there amongst the people. [Interruption.]

In relation to the land that was under question in the Te Roroa report, undoubtedly there is a basis for what the member for Eastern Maori was saying: one particular purchaser of that land purchased it with what one could almost say was malicious intent against the Crown. I was pleased to hear the member for Bay of Islands say that a purchaser of another block of the land, a Mr Harrison, has just offered back to the Crown the reserve that he purchased. This is a case of a willing seller and a willing purchaser. It is a good deal, and that is what we should be encouraging. There is no problem with that.

The public needs to have security and needs to know---and both Governments have confirmed and repeatedly stated since the Act was passed in 1975---that no private land would be taken to settle claims. That is true. Justice is not served when one injustice is resolved by creating another. We have said that consistently tonight.

When the Te Roroa report came down last year my family, who have farmed in various bits of the South Island since 1862 and still do, were really concerned, as were a number of their neighbours and friends on neighbouring bits of land, that because Ngai Tahu had put in a claim for a large percentage of the South Island, the land on which those people had farmed for much more than 100 years would be taken from them. That was the perception.

This Bill, this amendment to the Treaty of Waitangi Act, seeks to dispel that perception and to enable those people to go on farming and living on their land with some degree of security and knowledge that the Crown will not acquire their land compulsorily to settle the claims. There is now no reason for those people to be concerned that this might happen.

Many people are alert, particularly as we become more aware of the injustices that have been set up and of the fact that the tribunal is there to hear grievances against those injustices that have been perpetrated against the Maori people since 1840 and before. The Waitangi Tribunal has a profound role in New Zealand in educating, and, as the Minister said today, even in writing the real history of New Zealand.

I am thankful that we have the tribunal. It allows grievances to be talked about, tempers to be cooled, and just, proper, and reasoned recommendations to be made. If at the end of the day the rest of New Zealanders are worried that private land may be acquired for the settlement of the claim, we are serving the country no good at all, because fear of that kind seeks only to exacerbate and worsen race relations.

The very good that was coming out of the Waitangi Tribunal in settling the claims, hearing the grievances, and writing the history as we should know it, was being undone because of the fear that was being perpetrated by the recommendation that came out of the Te Roroa report---admittedly, a recommendation by a division of that tribunal, not by the whole lot. This Bill states that that will not happen; that the tribunal will not be able to make recommendations that involve the acquisition of private land.

Much of the land that is subject to grievance and claim is private land, and, as the member for Bay of Islands said, this sends a shiver up the spines of a number of the people whose land is mentioned in the claims to the Waitangi Tribunal. They ask quite legitimately: ``Why is my land mentioned there? Does this mean that I'm going to lose it?'. They sit there and worry, and their fear is exacerbated, and the next time they see a Maori claim mentioned in the paper, or they meet somebody in the street, or they play rugby or netball with them, suddenly they fear that person because they think: ``My gosh! They are going to take my land.''.

Admittedly, the land may have been taken somewhat less than justly in the first place, but righting that injustice by creating another injustice is not the way to go.

The land that is subject to the claim has to be detailed. Often it is privately owned land, but the way in which the system is set up to deal with the injustices, to right the wrongs, and to settle the claim, is that Crown land, not private land, will be used.

The Bill is a very small Bill just to state quite categorically and to reassure the people of New Zealand---the landowners, the farmers, the lifestyle livers---who are out there on their bits of land that may well be under a claim, that they are safe and secure, and that unless they want to sell they will not have their land taken from them.

It seems to me that, at a time of tremendous change in New Zealand during the past decade, to offer this security to the private landowners of New Zealand is a small thing that we can do in this House. I am happy to be able to work towards that commitment as we pass this Bill through its various stages in the House.

A lot of private land perhaps has been transferred. The other land that will still be able to be used as compensation for private land that is under a claim could be the State-owned enterprises land; it could be Crown land; it may possibly be land that is used for education; it may be vested land in various Crown organisations. But from now on private land will not be able to be used in that way.

In many ways the Bill is purely to set the public mind at rest. There is not a lot in the original Act that states that private land could be taken, but the perception has been there ever since the Te Roroa report came out. The Bill is what we are offering to the nation tonight to say that private land is sacrosanct; there is no need for

people to go to bed at night worrying that tomorrow morning there will be a report in the paper that the Waitangi Tribunal is recommending that one's farm be taken to settle a Maori land claim. Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): It is really not necessary to have legislation to settle the concerns and anxieties of private landowners. Education and the educative process are enough for that. However, the Bill is here, and the Opposition will permit it to go to a select committee.

More will be said on the matter, but I cannot overemphasise the fact that the concerns and anxieties of people who own private land about the likelihood of its being taken have been based on misinformation and certainly have not been based on the terms of the Waitangi Tribunal and the reasons and objectives for which it was established.

I can remember---I think that I am the only one in the House who can---when the tribunal was first recommended by a very small caucus committee of which the late Sir Gerald Wall was chairman. There were only a few of us---fewer than a handful---on the committee who recommended the measure. Eventually it became the Treaty of Waitangi Bill that was introduced.

It was never intended that the Act have the power to do that. There is really no need for the Bill, and I emphasise that. However, when there is a willing seller, and the land has been pointed out by the tribunal to have been the subject of some happening in which the Crown dealt unfairly with the tangata whenua of that land, there is nothing to stop the Government from offering the land, and the private owner from selling it. But nothing makes it mandatory that the land be taken compulsorily under the Waitangi Tribunal legislation.

The Maunganui Bluff, or the area around there---the land owned by Alan Titford---was the subject of the Government's intention to purchase that farm because it was part of a Maori land claim, and \$2.5 million was offered. There was a situation in which if one was a willing seller, or the price was not right for him, the Government was prepared to buy the land in order to satisfy the dishonouring by the Crown of an original promise, of an original contract, of an original agreement.

Is there any suggestion by Government members that that cannot still be done in the future: that if there is a willing seller the Crown will buy the land---if it is reasonable---because the land was taken as a result of a broken agreement between the Crown and the original owners? That can still occur. It has been done and it will occur. This legislation will not stop it, but I emphasise that the legislation is not necessary. The result about which there is concern was never envisaged before the legislation was originally introduced; when it was originally formulated---and I was personally associated with that---or since.

It is just unfortunate that this whole Bill is based on misinformation. In fact, that was pointed out by the director of the tribunal when he observed that public alarm about Waitangi Tribunal claims over private land was based on misinformation and propaganda by people pushing barrows. He also pointed out that the tribunal heard all claims, including those for private land, provided they met criteria set down in the tribunal's legislation. But the tribunal did not have the authority to reject a claim because it involved private land, nor did it have the right to direct what should be done. That is a political decision by the Government of the day, and, as he observed accurately, if the public understood the relationship between the Government and the tribunal there would not be an outcry every time a claim involving private land was lodged.

However, it is clear that this Bill is intended to prevent the

Waitangi Tribunal from making recommendations concerning private land. It is meant to appease some redneck voters who mistakenly feel that private land is at risk under the treaty legislation. That belief is most unfortunate. However, not only has it persisted for some time---this present case has brought it under the spotlight of the news media.

Claims before the Waitangi Tribunal are based on breaches by the Crown, not private operators. As I have said, this move is therefore meaningless. However, we will see what happens before the select committee.

Much has been said of the Te Roroa claim, and it was undoubtedly that episode that caused the Government to announce that it would restrict the tribunal from making recommendations concerning private land. Personally, I did not think that it was necessary for the Government to give those assurances. However, it did, and as a result we have this Bill.

We reflect that the Waitangi Tribunal found that the Crown had abused its powers relating to the Te Roroa people and some of their lands, which were between Dargaville and the Hokianga, and we therefore need to look with greater perspicacity at the future obligations of the Crown, which originated the injustice, with the result that today the land is owned privately.

As I said, if the current landowner is prepared to sell, there is absolutely nothing that ought to stop the Government from purchasing. It was the Te Roroa episode that caused the Government to announce that it would introduce this Bill, but, if one looks further, many of the complaints made were because of the lowering of land values in the vicinity. That was the reason; that was the point that upset private landowners---that land values would go down because land had been referred to in a recommendation from the tribunal. That was the basic reason for the concern of most who expressed it at that time.

The Treaty of Waitangi was established as a partnership between the Crown and Maori, and it is in that context that the work of the tribunal should be understood. Curbing the recommendatory powers of the Waitangi Tribunal may have some serious repercussions. Certainly it would take the tribunal somewhat away from the original intentions when it was set up. It is a backward step that may prevent the tribunal from pursuing justice, or from coming down with a recommendation in pursuit of justice because of a Crown misdemeanour, or the breaking of a contract by the Crown. It will be regrettable if this Bill does that.

Claims by Maori people, including the recent Te Roroa case, are, I emphasise, against the Crown, not against private landowners. As I have said repeatedly tonight, not one inch of private land has ever been or ever will be at risk, unless that private owner wishes to sell. The Government may purchase and return the land to the original owners because of an earlier misdemeanour by the Crown, or an injustice by the Crown.

If the tribunal's recommendatory powers are limited that could inhibit its work in identifying where the Crown has committed injustice, and that would be a very sad thing because of all that has been achieved by the Waitangi Tribunal. It would throw away the major advances made by the Labour Government to address vital issues of justice for Maori. It will also incite unnecessary misunderstanding and conflict, and the Government should not be provocative and should concentrate on being constructive.

Hon. D. A. M. GRAHAM (Minister of Justice): When the tribunal issued its findings on Te Roroa it made some recommendations to the Crown. In so far as Mr Titford's and Mr Harrison's farms were concerned---those that had the Manuwhetai and the Whangaiariki



reserves---the tribunal recommended that the Crown should buy those farms and those reserves at whatever cost. That put the Crown in an impossible bargaining position. I think that goes without saying. The tribunal also made a recommendation for other properties in the area.

I do not doubt that the tribunal was well intentioned, but the effect of those recommendations unquestionably has been that the value of the farms to the owners of the private farms has diminished considerably, and, indeed, there seems to be some evidence that it has been almost extinguished. That value may recover over time, but for those farmers at the moment I think that we would all have to agree that that is a quite unsatisfactory situation.

It is true that claims are made against the Crown; it is equally true that claims may refer to private land that is subject to the claim in the sense that the claim refers to those parcels of land, or the claim relates to that area, but they are not available---and never should be on a compulsory basis---to be used in the settlement of claims. Nobody in the House suggests that they should, and the point is: should we make it clear that the tribunal cannot order the acquisition of private land? That is the policy of both parties; I do not have any trouble with that, and, in view of the negative impact of the findings and recommendations on the farmers at Te Roroa, I think it is perfectly proper to put this provision in.

This matter is perhaps another manifestation of the difficulties that the Crown has and that Maori have, in trying to resolve the difficulties of the past. These negotiations, of their very nature, are complex, and it takes a good deal of patience and understanding, and skill and goodwill, actually ever to achieve anything at all. My hope is, as we work towards settlements in this regard---and they are slow---is that that understanding and goodwill is there, and I do not want to see it prejudiced or put in jeopardy in any way by any misunderstandings, however caused. So if this Bill puts to rest some concerns that people have---genuine concerns, unquestionably; maybe misinformed, but genuinely felt---then I think that that is in order.

I say to the House tonight that the Crown is determined to make progress in this matter, because we are absolutely convinced that we will never have the harmonious race relations that we all want unless we do make progress in this difficult matter.

Having said that, I say that there is a lot of comment made almost daily on the obligations of the Crown under the principles of the Treaty of Waitangi. There are also obligations on Maori under the Treaty of Waitangi. One of those obligations, it seems to me, is to act responsibly and honourably in dealings with the Crown, and if one goes overseas to speak one should be careful what one says, putting things fairly, honestly, and carefully, and honourably and responsibly.

I want to record in Hansard, because I think it proper to do so, what two New Zealand Maori have said overseas at the United Nations in recent times. The first is Dr Tamati Reedy at the United Nations in New York, who said this, relating to the Sealord Products deal: ``Mr President, I bring notice to this great assembly of the United Nations this act of violation by the Government of our country. We Maori are saddened that our country's Government, which recently won a place on the United Nations Security Council, should now act in utter violation of the rights of its own minority indigenous group. The fact that it does so on the eve of the 1993 International Year of the World's Indigenous Peoples is remarkable for its callous disregard and insensitivity of indigenous rights. Its action is reminiscent of the land confiscations and denial of Maori rights perpetrated during the colonial period of New Zealand's settlement by the British Crown in the last century.''

In the past few hours, I suspect, Moana Jackson at the

international work group said this: ``Mr Chairman, the fisheries deal and other denials of indigenous rights indicate that the New Zealand Government has no real intention of acknowledging the injustice of the extinguishment doctrine.''. And later he said: ``Such action illustrates the hypocrisy of the New Zealand Government's alleged support for human rights. Its arrogant dismissal of Maori rights, which have existed since time immemorial, is yet another denial of the right of Maori to once again exercise the self-determination which this forum seeks to acknowledge, and which the working-group on indigenous peoples seeks to ensure.''.

I have no objection whatever to any New Zealander speaking freely on any subject-matter, but when one goes to the United Nations I think one has an obligation to make certain that the facts as given to the United Nations are correct and that one is acting responsibly because one is there for New Zealand. I do not believe that either Dr Tamati Reedy or Mr Jackson were correct, and I deplore the statements that were made and the manner in which they were made.

I am not going to argue whether or not they are right in their interpretation of the extinguishment of rights---we could debate that at another time; we have already debated that---but I simply want to say to Dr Tamati Reedy and to Mr Moana Jackson that I do not believe that there would be many New Zealanders who would agree with their interpretation of what was done and why.

It may be wrong, but I am saying that the perception of New Zealanders is not: ``Here is another attempt to rip off Maori.''. It is not that at all. If the Maori people want progress to be made in that area I simply ask them to take care. It is quite easy to turn the tap off. It is quite easy to deter Governments from trying to make progress. It would be easy for the Government simply to abandon it and to say that it is all too hard.

Hon. K. T. Wetere: Is the Minister saying that justice goes out of the window?

Hon. D. A. M. GRAHAM: No, I am not saying that. I had hoped that the member would listen. I am saying that if Maori wish progress to be made, they should just be aware of the political climate in which they are speaking. There are times to be forceful and there are times to be careful. We are doing well and I do not want to see the progress jeopardised by inflammatory statements, frequently based on misinformation that does not help us here and definitely does not help New Zealand overseas. I am not saying necessarily that it is right or wrong. All I am saying is: please take care in what one says, otherwise we will jeopardise the good work that has been done during the past few years and that is capable of being done in the next few years.

It is a pity that a short Bill has had to be introduced; nobody wanted to do it. The time of the House is being taken up for a one-line Bill. But the reality of the problem is quite obvious. Those of us who have been up to Te Roroa, or who have talked to Federated Farmers, or who have received mail from the farmers at Oranga, know what has happened to the value of those properties, whether or not that was intended by the tribunal.

Hon. K. T. Wetere: Tell them to come to the committee to make representations.

Hon. D. A. M. GRAHAM: They can come to the committee to make representations. I have no doubt that there is one farmer up there who, in desperation, sought a tender at any price for his farm, his stock, his forestry, the whole lot, and could not get even one tender for any of it. That is the fact of the matter, and he is not Titford nor is he Harrison.

So to pretend that that recommendation had no effect is just not being realistic. It has had a tremendous effect. I want to avoid that

in the future. It is better that it be made clear. In my view it is unfortunate that the tribunal made that recommendation. Perhaps it did not think it through as well as it might. It has lived to regret it but we do not want to repeat it. Therefore I support the Bill and I suggest that it be passed as soon as possible.

Hon. DAVID CAYGILL (St. Albans): I am not sure that that was the most helpful speech that the Minister of Justice could have made.

Hon. Doug Kidd: It was realistic.

Hon. DAVID CAYGILL: No, I do not think that in all respects it was realistic, but I should like to respond to what he said.

Let me start with some things that I can find myself in agreement with him on. It is quite clear, although a little outside the main thrust of the Bill, that those people who go overseas to speak to a body as august as the United Nations---in a capacity that will be seen as speaking on behalf of New Zealand, or at least reflecting a considerable body of opinion in the country---have an obligation to make sure that the facts to which they refer are correct. That probably goes without saying, but, since it has been said, I say that the Opposition clearly agrees with it.

I would like to add something, though. I am not sure that it is right for the Minister to talk, as I think he did, as though two individuals are the same as the entire Maori population. They are not, however well known those two individuals happen to be. That may be the perception overseas; we ought to have a better developed understanding of the variety of views that people may hold.

I will come back to the Bill and to something else that the Minister said. He said that we need to be aware of the political climate. I am not quite sure that I understand the full sense in which he meant that. He said also that we need to avoid inflammatory statements. I certainly agree with that. But I thought that that was contradicted a little by some of the things that he said.

If I understand the logic of the argument advanced by everyone else on the Government side in respect of the Bill, it goes something like this. Some people have come to believe that the Crown can compulsorily acquire private land, based on the recommendations of the Waitangi Tribunal or in satisfaction of those recommendations. I think that was the burden of the argument put forward by the member for Western Hutt, and the member for Bay of Islands argued in a similar fashion. Yet both acknowledged---

Hon. Doug Kidd: It's the view in the streets.

Hon. DAVID CAYGILL: Yes. When pressed they are not able to identify too clearly which people think that way, but those members say that some people have that perception. They themselves do not share that view. As members of Parliament, they have made it their proper business to satisfy themselves about the law and they know that that is not actually right. They know, the Government knows, and the Minister of Justice knows, that the Crown does not have the legal authority to acquire private land compulsorily in satisfaction of Waitangi Tribunal claims. That is indeed the case.

I have a reason to care about the fact that that is right. That reason is simply that about the only local issue in my electorate has to do with the Crown's capacity to acquire private land for a motorway that has been so designated for the past 26 years. The precise powers of the Crown to acquire private land against the resistance of property owners in my electorate is a matter that I have had occasion to study on behalf of my constituents.

Regrettably, the Crown can acquire land compulsorily for motorways---even motorways that Transit New Zealand will not fund, and as a consequence of that power people cannot sell land. I understand that people can have their property rights expunged as a result of recommendations made by outside bodies.

Hon. Rob Storey: One cannot sell it if no one will buy it.

Hon. DAVID CAYGILL: Yes, that is right. No one will buy it, because Transit New Zealand will not buy it. I mentioned that only to illustrate the point.

I understand that people can feel very strongly about the so-called rights of private property. Clearly the point is that those rights are actually not an issue here. The Bill is all about appearances and not about facts. The Crown is not seeking to acquire any property compulsorily in Northland, nor does the Crown have the power, nor is it seeking to take the power.

John Carter: That's the perception.

Hon. DAVID CAYGILL: That is absolutely right. Instead, A bill has been introduced that the Government states will take away that threat from people because the Waitangi Tribunal will not even be able to make a recommendation to the Crown that the Crown acquire the land voluntarily, which would solve the problem.

Hon. D. A. M. Graham: Didn't say that at all.

Hon. DAVID CAYGILL: Well, the Minister of Justice might not have said that, but his colleagues certainly did.

Hon. D. A. M. Graham: That doesn't stop voluntary bargaining.

Hon. DAVID CAYGILL: I am grateful to the Minister of Justice, because he puts his finger on one of the things that is wrong with the argument. In the first place, the Crown will still be able to seek to acquire land voluntarily. In the second place, Maori will still be free to come and ask the Crown to do exactly that. Maori will still be free to go to the tribunal to raise the issue. The only thing that the Bill states is that the tribunal will not be able to make that particular kind of recommendation. The claim can still be made.

Ian Peters: The member's got it.

Hon. DAVID CAYGILL: Yes. In view of the fact that the grievance will still be there, Maori will still be making the claim, the Crown will still have the capacity to seek to purchase land, and, for that matter, as much as this legislation is not retrospective, it will not expunge in any way what was actually being said not just by this tribunal but by a judge whom the tribunal quoted when it said---

Hon. D. A. M. Graham: Acheson?

Hon. DAVID CAYGILL: Yes---that the land should be acquired no matter what cost is involved for the Crown. I do not mean to be unfair to the Minister of Justice, but it does need to be acknowledged that the tribunal did not take it upon itself to say ``Spare no expense''.

Hon. D. A. M. Graham: We can do no more.

Hon. DAVID CAYGILL: Let me just read it. The tribunal stated: ``We adopt Judge Acheson's findings in 1952 when he said . . . .''---[Interruption.]

Ian Peters: That's right.

Hon. DAVID CAYGILL: Let me just quote it in full. Judge Acheson's findings in 1952, which have been adopted by the tribunal, were: ``The circumstances of this case cry aloud for redress. The two reserves are the Maoris' and should be returned to them, no matter what cost to the Crown this may involve.''. More than that is quoted; I quoted just from the summary.

It is clear that the judge stated 50 years ago that this case is so unjust that the Crown should spare no effort to fix it up. That case cannot be undone. [Interruption.] This short little Bill will not satisfy anybody; it will not remove the 50-year-old, or the more recent, findings about Northland.

Ian Peters: It doesn't satisfy the voters.

Hon. DAVID CAYGILL: It would satisfy only---[Interruption.] Is the member for Tongariro prepared to concede that that is the point? He

is saying: ``Well, I'm satisfied that I can tell my voters that I looked after them.''. All that that member is really saying is: ``I reckon I can get away with this. I can take this Bill around and say: `Look at me. Aren't I a good boy? I have done my job.' ''. Though the truth of the matter is that he has not done his job.

This Bill was not needed. All that was needed was for the Government to have the capacity and the will to stand up---as John Kneebone, one of the members of the tribunal, did---and to tell the truth. The Crown does not have the capacity to acquire land compulsorily, and the tribunal did not ask it to do that.

Rt. Hon. Mike Moore: It is because nobody believes anything the Government says.

Mr SPEAKER: Before we proceed any further, I say that the standard and the amount of interjections are quite---[Interruption.] Order! I say to honourable members that members who are speaking are entitled to be heard in reasonable silence.

Hon. DOUG KIDD (Minister of Maori Affairs): I would like to wind up the debate by addressing one or two points directly.

Rt. Hon. Mike Moore: What's the badge?

Hon. DOUG KIDD: It is the blue roughly badge. I will tell the Leader of the Opposition about it. It came out of the Maori fisheries settlement negotiations---a very exclusive little club.

The process of committing the Government to the resolution of treaty claims is a very difficult task. It is a huge burden, and is frightfully costly at a time when, frankly, to all intents and purposes, the Government is bankrupt. Whatever we do is a charge on our children and grandchildren, at least. That is not an excuse to avoid the task, but is to state the obvious.

In response to the comments made by the member for St. Albans about my colleague the Minister of Justice, who was in charge of negotiations, I ask him to consider this: the appearance becomes the reality. After the Te Roroa report was published---no matter what anybody said---the Government's policy was that private land would not be taken to satisfy treaty settlements.

The previous Labour Government's policy was to the same effect. The law that states the tribunal's recommendations are only that---recommendations and not binding. The appearance, the perception, became the reality in the minds.

As the Minister of Justice quite rightly said, the tribunal gave the Crown no room to negotiate by saying that it must implicitly and at any cost and without any ability to negotiate to acquire---

Hon. David Caygill: That doesn't have to be accepted.

Hon. DOUG KIDD: Let me tell the member about the way that the perception becomes the reality. Out there, the bank managers, the stock firms, and the land agents said: ``No lending, no loan renewals, no buyers. You put the place up for tender. No bidders.''. Solely because of that recommendation, it is not binding; it is worthless.

It has been said endlessly. I put it to the honourable member---[Interruption.] No, I have only 5 minutes, so the member will have to listen. I put it to the member that the judge of the Maori Land Court who chaired that tribunal is a lawyer and no fool. He must have known that the effect of that recommendation would be to destroy the value of that land and destroy the ability to negotiate and transact.

I put it to the House, knowing the responsibilities of my office, that that recommendation threatened the treaty process to its very foundations.

Hon. David Caygill: Will the Minister answer one question?

Hon. DOUG KIDD: No, I will not be diverted. I want this to be on

the record. The tribunal nearly destroyed the treaty settlement process---a process to which I am personally committed and that I believe is hugely important for New Zealand---by that indulgence.

Hon. David Caygill: A different decision should have been given than was given in 1942.

Hon. DOUG KIDD: I do not care what was said in 1942; I was still in napkins. I am not responsible for that decision or for the sins of my forebears; nor is anyone else in this country.

I want to say something to the House, and to leave it something frightful to consider. There is all this talk about the Crown. I want the House to ponder this: the Crown is no more or less than that tiny number of New Zealanders who are the majority in the seats that make the difference between Government and the Opposition on election night.

That makes Parliament; Parliament is sovereign. Therefore, the Crown is a solemn institutional structure, but a fiction. In this country, the people are the Crown, and that tiny number of people will decide which party is the Government. The member for St. Albans shakes his head. It terrifies me: a small number of people in New Zealand decide whether there will be any progress in the resolution of these matters. Therefore, the confidence and the support---not unanimous---of the people---

Hon. David Caygill: That doesn't justify producing Bills that don't do what they say they do.

Hon. DOUG KIDD: I am just talking in terms of the cruel reality in which we engage on this historically important task; a task to which I am personally committed and that, I might add, is at great electoral expense to myself; I put that aside.

Hon. David Caygill: Ha, ha!

Hon. DOUG KIDD: I say to the member in all sincerity---

Mr SPEAKER: Order! The honourable Minister's time has expired.

Bill introduced and read a first time, and referred to the Maori Affairs Committee.

## **22 Jun 1993, 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session, Hansard Vol 536, pp16163-16174**

### **Treaty of Waitangi Amendment Bill (Report of Maori Affairs Committee on Bill)**

#### TREATY OF WAITANGI AMENDMENT BILL

##### Report of Maori Affairs Committee

IAN PETERS (Tongariro): I am directed to present the report of the Maori Affairs Committee on the Treaty of Waitangi Amendment Bill. I move, That this report do lie upon the table. The Treaty of Waitangi Amendment Bill was introduced on 23 February 1993 and referred to the Maori Affairs Committee for consideration. The committee called for submissions and set a closing date of 22 March 1993. The committee received 23 submissions---18 written submissions and 5 oral submissions. The committee heard 3 hours 11 minutes of evidence, and spent 2 hours 59 minutes in consideration.

The Bill amends the jurisdiction of the Waitangi Tribunal by providing that, subject to sections 8A to 8I of the Treaty of Waitangi Act, the tribunal shall not recommend that the Crown acquire ownership of any land or interest in land held by any person. It is important to understand the background to that amendment. The weight behind the recommendations of the report by the Waitangi Tribunal cannot be understood unless one has read the report in full. It is in that context that the recommendations need to be considered.

The report of the Waitangi Tribunal in respect of the Te Roroa claim was completed on 3 April 1992. The recommendations of the Waitangi Tribunal state in part: ``On the basis of our findings, we recommend the return to tangata whenua of all the land which should

have been set aside from Crown purchases of Maunganui, Waipoua, Waimamaku, and the Wairoa lands referred to in findings 8(1)(ii) and 8(1)(iii). The particulars are: (a) Manuwhetu and Whangaiariki. We adopted the 1942 findings of Judge Acheson, who said: 'The circumstances of the case cry aloud for redress. The two reserves are theirs and should be returned to them, no matter what cost to the Crown this may involve.'; (b) Kaharau and Te Taraire. We also applied the findings of Judge Acheson, which I referred to above, to these two. The recommendation was: 'We recommend that the Crown take all steps to acquire these lands in (a) and (b) above, which should not have been included in its parenthesis and to return the same to tangata whenua.' ''.

At the select committee we looked very closely at the words 'private' and 'person', and also at the title of the amendment. It is obvious to the committee that the name 'Treaty of Waitangi' should not have been used for the Bill, because the Treaty of Waitangi is not a Bill as such, nor an Act, therefore it cannot be amended. As there have been alterations to the Treaty of Waitangi legislation on at least three occasions the committee felt that it was not its responsibility to make a radical change in that sense.

It is a fact that private land is sacrosanct to New Zealanders. While there was considerable discussion about the meaning of the word 'person', the amendment has finally defined private land as any land or interest in land held by a person other than the Crown or a Crown entity within the meaning of the Public Finance Act 1989.

The submissioners who came before the select committee were very strong in their views. I have to say that some of the submissions were very disappointing if one takes into account race relations in this country and the need for all people to get on with one another. I will not cite these in the House, but as chairman of the select committee and a person of mixed blood I was considerably disappointed at the behaviour of certain people. I am certainly not referring to Federated Farmers, from the Dargaville area, which gave us a very concise submission.

There is one other element in this report that I will touch on. The select committee wished to request a further legal view on the understanding of the word 'person'. It was also a great disappointment to find that Government departments had written letters claiming that the select committee was going beyond Government policy and was seeking to change the legislation. I remind those bureaucrats, in particular the ones from the Department of Internal Affairs, that select committees are part of Parliament, and that they have every right to ask questions and decide jointly on Government policy if need be. It was a disappointment to see documents in which the select committee was accused of trying to change Government policy. I am delighted to report the Bill back to the House.

Dr BRUCE GREGORY (Northern Maori): I certainly endorse many of the comments made by the member for Tongariro. I believe that the Bill will be remembered throughout this land, particularly by the Maori people, for what would appear to be very much a knee-jerk reaction by the Government in succumbing to the influence of the farming fraternity. As the member for Tongariro said, the Bill raised hackles regarding the very essence of race relations in this country. I believe that will be the impression that the Bill will leave on many of the citizens of this land. That does not bode well for the essence of race relations, nor for the meaning, the interpretation, and the substance of the Treaty of Waitangi itself. That is cause for great concern to all of us.

This iniquitous piece of legislation---if I may call it

such---arose out of a hearing and a recommendation made by the Waitangi Tribunal with regard to land in the Hokianga area and that affected the Te Roroa people in the Dargaville and Waipoua areas. If we are to canvass the history of the lands concerned, the mistake was the result back in 1942 that followed the judgment made by the honourable Judge Acheson, a renowned judge of the Maori Land Court at the time, who had the respect of many people, both Maori and pakeha. Judge Acheson made determinations with regard to certain areas of land in the Waipoua area that, with the passage of time, were taken by the Crown and sold into private ownership.

If one very carefully reads the records of the tribunal hearing, one will note that the tribunal made specific reference to that judgment. It did not, as the papers subsequently state, rule quite specifically with regard to private land. That, of course, was the beginning of all the injustice and all the misinterpretations---and I believe that the news media played a large part in misinforming the public about that. The result is that, rather than the Government standing up and holding to the truth and righteousness of the particular case, it has succumbed to a significant portion of the electorate, and introduced a Bill that attempts to deal with the question of private land and with the powers that the Waitangi Tribunal will not be able to utilise in future in respect of that land. Those are the two important considerations in the Bill.

The other aspect that needs to be raised is what was meant by the words ``private land''. Opposition members will oppose the Bill because we believe that it is not in keeping with the substance of the Treaty of Waitangi, and that it lends itself to some very serious debate, especially in respect of private land. The definition of ``private land'' in the Bill is: ``any land, or interest in land, held by a person other than---(a) The Crown; or (b) A Crown entity within the meaning of the Public Finance Act 1989:''---and there is a whole list of those organisations.

The point that I want to make to the House is: what is the situation if land that belongs to a private individual, be he Maori, has for some reason been taken from that individual in the past; how does he seek redress when the Bill that is being put before the House rules that that will not be possible? That is one of the key points that I wish to raise to the House in respect of this particular section of the amendment.

The other amendment, which deals with the questions of the tribunal's right to return to Maori ownership any private land, and the acquisition by the Crown of any land, certainly makes a watertight case for the Crown. I believe that it is not in the spirit of the treaty, nor does it allow for the situation that I made reference to---the return of land to an individual should a case be found in his favour. The Waitangi Tribunal is not a decision-making organisation in that sense; it is a tribunal that makes recommendations.

It behoves the Government of the day to determine whether or not it accepts those recommendations. One cannot help but feel that the Government did not have the courage to do that. What it is doing is shifting the onus further down the line by curbing the tribunal, or by clipping its wings, and not allowing that to happen.

If we were to examine the history of the tribunal we would find no reference to private land. Only in one instance does the tribunal have the power to deal with a definitive determination that even the Government of the day must respond to, and that is in relation to some land of the State-owned enterprises. That is the only instance in which the tribunal overrules even the Government, or makes recommendations that the Government must put in place.

In reporting back this Bill I can understand the degree of



people's reactions in terms of race relations. There is no doubt that this amendment Bill is unfair, unjust, and not in keeping with the Treaty of Waitangi, nor do I feel that it does justice to all of us as citizens of this land.

This Bill must be resisted. It was introduced as a knee-jerk reaction by the Government in response to a Government clientele, which, admittedly, has significant force and ability to curb members of the House. I cannot help but refer to the member for that particular area of Hobson, but I shall say no more about that. I believe that this Bill will not be in existence too long once a Labour Government takes the reins in the near future.

TONY STEEL (Hamilton East): The Bill is very small, very concise, very clear, and comprises just two clauses. As has been mentioned, its purpose is to prevent the Waitangi Tribunal from making recommendations that the Crown acquire the ownership of any privately owned land or interest in land held by any person. It clarifies a very narrow point that arose, as has been heard, in the Te Roroa report in April 1992 when a division of the Waitangi Tribunal recommended that the Crown purchase certain private lands involved in the claim.

A recommendation once made does impact on the sense of security of the title of private land. To suggest that the impact does not flow on to the market value, or potential market value, of the land is to avoid the issue. The Government's position is quite clear---that private land should not be subject to recommendations from the Waitangi Tribunal.

The chairman of the select committee has given an indication of the detail of the background that led to this Bill, and it is not my intention to go through that detail. I just remind the House that the Bill's origin is based on the decision that came through from the Waitangi Tribunal on a number of areas, where its findings were to recommend the return to tangata whenua of all land that should have been set aside from the Crown purchase of Maunganui, Waipoua, Waimamaku, and Wairoa lands. The recommendation that all steps should be taken to acquire those lands precipitated a concern, obviously, with the private land owners. Other lands were also particularised---lands in private ownership.

Members of the local farming community claimed, quite rightly, that the values of their farms had dropped as a result of the Te Roroa report and its recommendations. The Government's response was that no private land should be compulsorily acquired as a result of the tribunal's recommendation. The position in relation to those reserves has since been a matter of dispute between the Crown and Maori.

As has been mentioned, the committee spent a considerable amount of time on the definition of private land, and the amended clause, as proposed, goes a long way to clarifying the position in regard to private land. A proposed section 1A, 'Interpretation', has been included, and reads: 'Private land' means any land, or interest in land, held by a person other than---(a) The Crown; or (b) A Crown entity within the meaning of the Public Finance Act 1989:'.

That clearly confines the recommendation to all the land assets on the Crown balance sheet---any of the bodies listed on the fourth schedule. It is very clear and quite precise. People with private land ownership should not be in any doubt that their ownership is protected, and that they will not be subject to any recommendations of the Waitangi Tribunal.

The committee also proposed an amendment to clause 2 by substituting the following proposed subsection (4A) in section 6: 'Subject to sections 8A to 8I of the Act, the Tribunal shall not recommend under subsection (3) of this section,---(a) The return to

Maori ownership of any private land; or (b) The acquisition by the Crown of any private land.''.

So there is no ambiguity about what the Waitangi Tribunal can recommend. As I said, it is clear and it is very precise. I repeat that it is foolish and quite misleading to imply that a recommendation is no more than a recommendation, on the grounds that the Government need not take up that recommendation. But the fact that a recommendation has been made has an impact on the sense of security of private landowners subject to that recommendation. It also has an impact on the market value of that private land.

The purpose of the Bill is to prevent the Waitangi Tribunal from making recommendations in the future about private land or interests in private land, and I believe that it quite clearly achieves that.

Hon. K. T. WETERE (Western Maori): From the outset I want to support my colleague the member for Northern Maori, and my other colleagues, in opposing this Bill. The House will know that we opposed the introduction of the Bill for all of the reasons given. The House is well aware of the submissions made by the Ministers, the member for Tongariro, and the member for Hamilton East, and it seems to me that their hearts were not really in the Bill.

The other thing is that the Bill is based on trying to rectify a function of a tribunal that is not judicial in its context and saying that such a recommendation cannot be made. I say again that it will take more than this Bill to stop anyone from going to that tribunal and making submissions to it stating that private land is involved.

John Carter: Absolutely.

Hon. K. T. WETERE: Well, why have the Bill? I ask the member for Hobson---Bay of Islands, is it?

Dr Bruce Gregory: Far North.

Hon. K. T. WETERE: He is the 'member for the Far North' now? If it were that far, he would be right out of here. What are we doing with a Bill such as the one before the House at the present time? It does nothing for the credibility of the House to be dealing with legislation that does not do anything.

If one reads the submissions one will find that none of the people who made them really had an axe to grind, except one or two, who said: 'You can't include this land because the Waitangi Tribunal might use that land for settling grievances.''. Take for example, the Federated Mountain Clubs of New Zealand. Those who sat on the committee will recall---

Ian Peters: The member's friends.

Hon. K. T. WETERE: My friends? I happen to agree with some of the things said to the committee, but there are some things that I blatantly disagree with, primarily because if a Labour Government came into office the Crown's estate might need to be looked into, as well as the issue of how settlements are to be offered.

The reference in the case of that organisation was in respect of the Ngai Tahu claim. Quite frankly, I could not really agree with what the person making the submission to the committee said. I think it was Dr Hugh Barr. He came to the committee and made assertions about taking the conservation lands out of the equation for settlement purposes. He was therefore asking for an amendment to the Bill to exclude land of that type from the equation for that purpose. I thought that that would restrict the Crown's ability to look for land to make settlements in those cases, and I said accordingly that I thought that that was wrong.

Further on the submission clearly lays down the lands that were confiscated, and I refer to my own people in Tainui, and to those in Taranaki and elsewhere, except in the King Country, where no land was confiscated.

It would be wrong to restrict any Government's ability to make

decisions clearly, but the Bill tries to stop the tribunal from making a recommendation. There is nothing judicial about the nature of that. The only people who ever got anything out of this were the lawyers, and there is a lawyer sitting here who agrees with that. Quite frankly, one has to ask oneself where we will end up on these matters.

The other matter of great concern was raised by the member for Northern Maori, and that is the position of the Crown in so far as the Crown and Maori are concerned in that treaty partnership. I believe that the Bill begins to undermine that relationship. The treaty has been around for 150 years or more as the country has tried to bring our two peoples together. I believe that we are going down that track, but matters of this kind do not help that relationship.

I said to our friend in the chair that we have now reached a situation in which people of his descent will also be involved in some of these decisions, and probably be getting a fairer deal---or should I refer to the Clerk of the House.

MICHAEL LAWS (Hawke's Bay): This is a bad piece of legislation and I shall not be supporting it during the Committee stage. That is primarily because---

Hon. John Banks: Oh, stop grandstanding.

MICHAEL LAWS: If the Minister of Police, who now accuses me of grandstanding, had read the Bill and listened to the submissions made to the select committee he would know that this Bill does not address the basic core problem related to the Treaty of Waitangi and the tribunal's interpretation of that.

Hon. John Banks: I believe that it does.

MICHAEL LAWS: The Minister of Police should listen instead of interjecting, and he will learn something. The problem with the Waitangi Tribunal is this: either it has the recommendatory powers of a tribunal and takes those recommendatory powers seriously, or it does not. It is my belief that the tribunal does not need recommendatory powers to perform its function. The role of the tribunal is to find out the facts, to work out whether a grievance has been established, and to present those facts to the Crown on one hand and to the claimant party on the other. It should then let those two parties determine a just and equitable resolution of that problem.

But, no, what we do with this legislation is take away from the tribunal its ability to make recommendations on issues concerning private land. If one follows that logic, one also has to ask why the recommendatory powers are there at all. That is a question on which I have yet to hear any just or appropriate defence marshalled by any Government. The recommendatory powers of the tribunal are but a canard. They mean nothing and they have no impact on the Government of the day in relation to settling the issue. All that they do is create a fresh grievance if those recommendations are not carried into appropriate resolution by the Government of the day.

All that the House and the Government will have done for themselves is ensure that Maori claimants a generation from now will say: ``This was justice as established by the tribunal and as established by the tribunal's recommendations; it was not delivered, ergo fresh grievance. Justice was not done.''. So I cannot agree with a piece of legislation that fiddles around with the major problem of recommendatory powers.

Hon. John Banks: Who cares whether the member agrees with it?

MICHAEL LAWS: The Minister of Police portrays his contempt of the parliamentary process by that interjection.

The second issue relates to the definition of ``private land'' and ``private person''. Why was this Bill introduced? It was because of one tribunal settlement on the Te Roroa case up north that suggested

that some pieces of private land be acquired by the Crown to settle the claim. That is the reason that it was done. However, in the submissions at the select committee the definition of ``person'' was extended beyond private landowners in that capacity, to be everybody or anything that is not a Crown-owned entity.

So now that particular definition of ``person'', and the definition of ``private land'', also encompass regional councils, territorial authorities, and a whole host of companies that may have had land given to them, or acquired land by nefarious processes in the past, but are now exempt from having any recommendatory power attached to that. That matter was discussed at the select committee and there was almost universal agreement that there was an unsatisfactory conclusion to it.

I now refer to the third issue. I have read the introduction speeches and I have listened to some of the speeches in this debate. The only reason that this amendment has been introduced is that there is a perception that there is a problem, not that there is a problem in reality. That is the reason.

Hon. John Banks: There's a problem already.

MICHAEL LAWS: There is no problem on this issue at all, because everybody understands that the Crown cannot and will not compulsorily acquire private land in settlement of claims. Why are we creating a piece of legislation designed to satisfy a perception?

Hon. PETER TAPSELL (Eastern Maori): It never ceases to amaze me that a select committee charged with examining a piece of proposed legislation, having listened to all the submissions and decided---if not unanimously, certainly by majority---that the law should progress in one direction, should then return to the House and recommend that a diametrically opposite direction ought to be taken. That must surely point out a weakness in our select committee system and our parliamentary system. Clearly, there ought to be major parliamentary reform.

One other point that that matter raises---and the speech made by the member for Hawke's Bay makes it very clear---is that the Government is utterly bereft of any leadership on Maori issues. That, too, is a tragedy.

On this particular occasion, the Waitangi Tribunal was set up to hear claims by Maori against the Crown---no one else; against the Crown. That is clearly understood by members on both sides of the House. It was determined that the tribunal should have only recommendatory powers. That, too, is clearly understood by members on both sides of the House. The tribunal has no power to make a decision.

What was more reasonable than that the tribunal, having listened to all the evidence, should be unfettered in its ability to make a recommendation to the Government? What was more reasonable than that? It was up to the Government, no doubt led by the Minister, to make whatever decision seemed fair. But in this case the Government has submitted to a relatively small lobby group's vigorous protestations about the whole issue of addressing Maori injustice. Time and time again the Government has submitted to small lobby groups, and in the end that will prove to be one of its major weaknesses.

If, indeed, people do not understand the law, and if this issue is being addressed for that reason, why does the Government not spend something like the amount of money it is spending explaining the health charges? Why is it not spending anything on explaining to people that the tribunal has a recommendatory role only?

Some members have suggested that once the tribunal makes a recommendation that diminishes the value of private land. If that is the case, is there anyone in the House who does not see quite clearly that, while the tribunal may be restricted in making a

recommendation, there is no question whatsoever that the body of all the reports in future will make it perfectly clear what the conclusion ought to have been. In future, the bodies of the reports of the tribunal will make it crystal clear. After reading the body of the report, a child would be able to ask where the conclusion; would say that the conclusion was perfectly obvious; and ask why it has not been made.

To me that seems to be a weakness. Next year when the Labour Party becomes the Government I hope that we will have the courage to change that. It is bad law and it serves no one's purpose.

In my closing minutes I want to talk about the Te Roroa case, with which I had very close association and that brought to light the particular problem. I carefully considered the situation. I examined the land very thoroughly. Having thought about the matter carefully, I think that one aspect of the tribunal's report on that case was written in unfortunate language; I concede that. I think that the members of the tribunal now recognise that they might have put their recommendation in slightly different terms. It does not affect the argument, but they ought to be aware of that.

The second point is that the problem, which I examined carefully, was made largely by Titford, who I have said in this House before is no more than a common shyster. At present, he is involved in holding the Government to ransom, and I hope that the Government will have the courage to stand up to him. The value of his land, which he knew full well was under claim when he purchased it, is no more than \$200,000.

Hon. DOUG KIDD (Minister of Maori Affairs): It is important to state again clearly what this amendment does. The Bill is such that everybody can quickly understand what is being done---no more, no less. Quite simply, it states that the Waitangi Tribunal shall not recommend: `` (a) The return to Maori ownership of any private land; or (b) The acquisition by the Crown of any private land.``. That is the very simple and straightforward message in the Bill.

So that there is no ambiguity or doubt, the Bill states that private land is everything except that actually owned by the Crown or by a Crown entity within the meaning of the Public Finance Act 1989. That is public law; everybody can see the list of Crown entities. No longer can there be any confusion, fear, or rumouring about the state of affairs.

Essentially, that writes in clear and simple language what most New Zealanders always thought, no matter where they were in relation to the racial divide.

Hon. David Caygill: No.

Hon. DOUG KIDD: The member for St. Albans said: ``No``. I do not think that New Zealanders thought that private land was likely to be involved in the settlement process. If they did, there would have been an uproar years ago.

I put it to the House that the Bill spells out in commendably plain and simple language the situation as seen by most New Zealanders. That includes a very significant proportion of Maori---as New Zealanders or Maori---whichever way one likes to put it.

To say, as the member for Hawke's Bay said, that there was a perception of a problem and not a problem, I say that perceptions are realities in the market. There was a situation, which I am sure the member for Bay of Islands can describe, when a landowner, whose land was the subject of an acquisition recommendation, sought to get out of the problem and go away; no one was prepared to bid anything for the property. That is reality.

Hon. Peter Tapsell: What difference does that make?

Hon. DOUG KIDD: There is no use having a hypothetical argument here. The bank manager said that, therefore, he could not lend

anything for those other farms, and the sources of finance dried up.

Hon. Peter Tapsell: What point does that make?

Hon. DOUG KIDD: There is no point having an intellectual argument. That is reality.

Now, I believe that the environment in which the tribunal can work will be much calmer, more constructive, and it will enjoy ongoing and continuous support from the broad mass of New Zealanders of both racial origins. That is necessary for the tribunal's success.

Hon. Peter Tapsell: Don't include us in this.

Hon. David Caygill: No, the Minister is wrong.

Hon. DOUG KIDD: It is useful to have the position of the Opposition spelled out. The member for Northern Maori describes the Bill first as iniquitous legislation. The member for Western Maori affirms that, and confirms the remark of his junior colleague that a Labour Government would repeal this legislation. So, private land will be perceived---the reality---as being up for grabs under a Labour Government.

Hon. David Caygill: That's right.

Hon. DOUG KIDD: Well, it is good that New Zealanders know, so that there is no misunderstanding: a Labour Government would make private land available for recommendation anywhere in New Zealand. That is the problem.

Hon. John Banks: And the member for Hawke's Bay supports it.

Hon. DOUG KIDD: Yes, so maybe the people there need to take that into account. It is no use dancing on the head of the pin with regard to the matter. If the people believe, then it is---and the Labour Opposition members are saying that it would be under a Labour Government. I will deal with that further in the second reading.

Hon. DAVID CAYGILL (St. Albans): That speech did not help anybody, nor did it help the Minister.

John Carter: Yes, it did.

Hon. DAVID CAYGILL: No, that speech ignored a fundamental distinction between the previous right of the tribunal to make a recommendation in relation to private land, and the Government's capacity to carry out that recommendation. Of course, the Minister is aware of that fundamental distinction, but his speech did not acknowledge it.

I will now draw another distinction for him. The distinction between the tribunal's powers and the matters in dispute is also important. The Bill assumes---and the Minister said as much in his speech---that if the tribunal's powers were limited that would make the claims, the disputes, go away. It will not---and I am sure that the Minister knows that---but the Bill either ignores that or states otherwise.

If land has been confiscated, or taken unfairly, it will be the subject of claim and grievance whether or not the tribunal can deal with the matter. The Bill will not make those grievances go away.

John Carter: It still will be dealt with by the tribunal.

Hon. DAVID CAYGILL: The first problem with that interjection is that it is contradicted directly by other statements made by Government members. The Government and the member for Bay of Islands now appear to be saying that the tribunal can deal with the grievance in other ways; it just cannot make a recommendation in relation to private land. That will not do.

Hon. Doug Kidd: The member is saying that it is to be used in the remedies.

Hon. DAVID CAYGILL: If the Minister would kindly not interrupt me---

Ian Peters: Deal with the point.

Hon. DAVID CAYGILL: I am happy to deal with the point, but I would appreciate it if the Minister did not try to interrupt. The point is

that, if the remedies are not regarded as satisfactory by the claimant, the grievance does not disappear.

The whole point of the tribunal was that, since its powers were recommendatory only, it might very well be that grievances were not ultimately satisfied. But that was thought to be a proper balance. Now the balance is tipped back a bit more against the claimants. There is less reason to regard the tribunal as a way of dealing with historic problems.

I oppose the Bill because I believe that it is being advanced for reasons of political grandstanding.

The second reason I oppose the Bill is that it tangibly, palpably, will not work. Let me deal with the Minister's point about the financial impact of a recommendation in relation to private land. I do not dismiss the Minister's concern; certainly he is talking about a reality out there. The problem with his exposition on this point is that the Bill will not solve that problem, either. If the grievance cannot be disposed of, the claim will still be there. So there will still be an impact on private land. Try selling private land when there is known to be a claim, known to be a grievance, and when there is no satisfactory means of addressing that grievance. We can take the tribunal's powers away, but that will not restore the market value of the farmland.

Hon. John Banks: What's the member suggesting?

Hon. DAVID CAYGILL: I suggest that we listen to the wisdom of one of New Zealand's greatest farming leaders, John Kneebone, who was involved in this matter and who gave an excellent speech, which is recorded in the publications of the tribunal. One could not find a more sober, level-headed, intelligent, sensible farming leader, who is absolutely sensitive to the position of the landowners on this issue. The Government should listen to him because he was involved in this matter.

JOHN CARTER (Bay of Islands): This issue revolves round the following debate: when does perception become reality? The whole issue is about the fact that in Northland the perception has become the reality. The decision of the Waitangi Treaty in relation to the Te Roroa claim has caused a problem with private landowners. I do not think that anybody denies that. The Government is looking to allay the fear that has been generated by that decision.

The fact is that the Bill does not stop, and was never intended to stop, the ability of the Waitangi Tribunal to make inquiries into any claim, be it for Crown land or private land. It was never suggested that this Bill would deny the tribunal that ability, and it does not deny it that ability, at all. But the important thing is that the Bill takes away the fear of private landowners that the Crown might come along and compulsorily take their land to settle a claim. That has not ever been the intention, and it has not ever been permitted under law. We will now put that in law so that it cannot happen. What we are trying to do with this Bill is to stop the perception from becoming the reality.

When we were discussing this claim on the marae in Hobson, one of the Te Roroa claimants made a statement that, in my view, explained very well their view on the issue. The claimant said that one wrong did not rectify another. Those people do not expect this Government or any future Government to correct a wrong and settle a claim by taking land against the wishes of a private landowner.

Hon. David Caygill: Nobody here suggests that that should happen.

JOHN CARTER: That is correct; nobody in Parliament has suggested that, but it is the public's perception that that could happen.

Geoff Braybrooke: It's not true.

JOHN CARTER: Whether or not it is true, the perception has become the reality. People who own farms in the Te Roroa

area---[Interruption]---Opposition members know this; I understand that they have acknowledged it---cannot get finance for their farms. Financiers now will not support Northland owners of those farms. They are having trouble getting a cash flow because they cannot get support from financiers. The fact is that the perception has become the reality.

Hon. David Caygill: The Bill won't help.

JOHN CARTER: The Bill will help, because those farmers will be able to go to their bankers and financiers and say: ``Whatever's happening with the Waitangi Tribunal---

Rt. Hon. Jonathan Hunt: The legislation will be repealed.

JOHN CARTER: It may be repealed by another Government, but it will not be repealed while the National Government is in power, which it will be for a number of years.

The fact is that those farmers will be able to take this legislation to their bankers and say: ``My land is secure. You can arrange finance for me because it is now the law that no one can take my land from me.''

Hon. David Caygill: Will the member answer a question?

JOHN CARTER: I will endeavour to do so.

Hon. David Caygill: The farmers may well say that, but does the member have any evidence that bankers will take such a statement seriously?

JOHN CARTER: Yes, because bankers believe in the law of this land. In my discussions with bankers they have said that, once there is legislation to ensure that private ownership is enshrined, they will give support.

Geoff Braybrooke: Can the member name one banker?

JOHN CARTER: All the bankers are saying that. The bankers that I have had discussions with are saying that, once that principle is enshrined in law, they will give support. Whether or not we like it, the perception has become the reality.

The tribunal's decision has had a negative impact on private landowners---in particular, farmers in the Te Roroa area---and Parliament should not allow that situation to continue. Our duty as a Parliament is to ensure that race relations in this country continue on a good basis, and this is one obstacle that has caused problems. In my view, we are taking a very responsible attitude in putting through this legislation, which will settle down the issue, and, hopefully, give security to private landownership.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): The member who has just resumed his seat said that the perception has become the reality. But it is not the reality. That is the major point the Opposition wants to make. The perception is not the reality, and he did not say that it was, thereby acknowledging that it was not---although he did not emphasise that obvious fact.

The claims before the Waitangi Tribunal are based on breaches by the Crown, not by private operators. That is a fact. So the Bill is unnecessary, it is meaningless, and, at worst, it is dangerous. The Treaty of Waitangi embodies a partnership between Maori and the Crown, and I emphasise that fact. Part of that partnership's modern-day context involves settling Maori grievances relating to Crown breaches of the treaty. Restricting a vital part of the claims settlement process undermines the treaty partnership, which is at the foundation of the process. Therefore, the next Labour Government will repeal the legislation.

The previous speaker said that when his landowners took this legislation to the bankers they would pay up. By the time we reach the second reading and Committee stage of the Bill, he will be able to give us some indication of the result, because by then the landowners will have taken it to the bankers. I know that it will



make no difference.

The Government's intention with the Bill is clear: it has been introduced as a response to certain concerns relating to recommendations of the Waitangi Tribunal. Those concerns were raised following the release of the Te Roroa report in April 1992, which in part recommended the return of land currently in private hands. The Waitangi Tribunal found that the land should have been set aside from Crown purchases and returned to Te Roroa, rather than sold to private interests. The Crown was at fault.

Local landowners and others were critical of the report, fearing that the recommendations would result in the forcible confiscation of private land. They were mistaken. They misunderstood. Their perception was inaccurate. It was subjectively fractured. The other major concern was that the value of affected properties would depreciate markedly as a result of such recommendations.

The intention of the National Government is that this Bill will address those concerns. However, it will not address them. Eventually, that will be clearly evident.

The Bill as introduced provides that the Waitangi Tribunal shall not recommend, under subsection (3) of section 6 of the Treaty of Waitangi Act 1975, that "the Crown acquire ownership of any land or interest in land held by any person.". Excluded from the scope of the Bill are sections 8A to 8I of the Treaty of Waitangi Act, which deal with land transferred to, or vested in, State enterprises, certain educational institutions, licensed Crown forest land assets, and some railways land.

I make it clear to the House that the function of the Waitangi Tribunal is to make inquiries into, and recommendations on, matters in which the Crown may have breached its treaty obligations. I repeat that the concern of the Waitangi Tribunal is breaches of the treaty by the Crown, not by private landowners. That has to be understood, but, clearly, has not been understood by the Government. If the Government has understood it, it has closed off any cognisance of that fact.

The final settlement of treaty claims rests with the Government, not with the tribunal. The Government is free to reject, in whole or in part, the tribunal's recommendations. Claims made by Maori, including the recent Te Roroa case, are claims against the Crown, not against private landowners. I want to make it very, very clear that not one inch of private land has ever been, or ever will be, at risk. IAN PETERS (Tongariro): I thank members for entering the debate today on this Bill. I say to the Labour Opposition, and to the member for Hawke's Bay in particular, let me reverse the situation: are Labour Opposition members saying that the Waitangi Tribunal should have the right to look at claims placed before it, and to say that private land in private title should be returned if claimants can prove their case to be correct?

Rt. Hon. Jonathan Hunt: They are not saying that.

IAN PETERS: That is the point. If they are not saying that, I am at a loss to understand the reason that Opposition members are saying that the Bill is wrong.

Hon. David Caygill: The member has run two things together. We are saying that the tribunal should be able to inquire into private land. We are not saying that the Crown should have any right to be able to acquire private land against the will of the landowner.

IAN PETERS: I thank the member for his comment. Nothing that has been done by the select committee has changed that. Every Maori community---iwi, hapu, whatever---has a right to lay a claim before the Waitangi Tribunal. It is the tribunal's responsibility to look at the case.

I ask the question again: how come, in all the years that the

tribunal has been in operation, it has made only one recommendation that the Government return private land? Something must have gone wrong with the work of the Waitangi Tribunal. Among all the work that it has done, as good and as serious as it has been, we cannot find any such specific recommendations.

Dr Bruce Gregory: Has the member read its findings?

IAN PETERS: Yes, I have. The tribunal has had good reason to do that in the past, but has refrained for the obvious reason: the tribunal knows as well as we do that private land is sacrosanct.

I will give an instance. A Maori chief thought he was leasing 6000 acres of a peninsula up north to the Crown. He found out 2 years later that in fact he had not leased the land, but had sold it. That land has been in dispute. That block now includes Crown land and a Whangarei District Council wharf reserve, and also is owned by Maori owners---my family is part of the Maori ownership---and by many non-Maori farmers. [Interruption.] Is the member saying that, under this legislation, the Waitangi Tribunal cannot consider the case? The member is wrong; the tribunal can do that. That is its task; that is what it is doing.

The Government is saying that we need to reassure New Zealanders. I understand the arguments of the member for Western Maori. I have to say that I had misgivings about the Bill---I still do have them. In my view, it does not affect the legislation of the House. Nevertheless, I am convinced that New Zealanders need reassuring that their private land is theirs, and that we will not right a wrong by creating another wrong. So long as I am a member of this Government I will not be part of that.

Rt. Hon. Jonathan Hunt: If the member is not doing that, why are we proceeding with the Bill?

IAN PETERS: Apart from his having spoken on some health issues and koha, the member for Eastern Maori has no great call to fame for his representation of things Maori. Yet he is almost saying that what the Government is saying is not correct---that land should be returned if the claimants can prove that their case is correct, irrespective of who owns the land now. That is not correct.

I am saying today, as the chairman of the select committee---

Geoff Braybrooke: The member will be a good party member and do as the Whips tell him.

IAN PETERS: I thank the member. That will be a very good commercial in my newspaper next week.

I am saying that the Bill reassures New Zealanders. I have no interest in running arguments for the sake of politics, particularly when it comes to things Maori. This Bill reassures not only non-Maori landowners; there are a lot of Maori landowners who have purchased land by the sweat of their brow, and who have title to their land. They also want reassurance, which this Bill provides.

I am pleased that the Bill has been returned to the House. I am rather surprised that Labour Opposition members will not agree to it. I know one thing: they will not go back to their electorates and stand in front of private landowners and say: ``We voted against the Bill.'', because the landowners will immediately ask: ``Why?'. Opposition members will not have an answer.

The House divided on the question, That this report do lie upon the table.

Ayes 51

Armstrong	Hancock	Maxwell	Smith, L.
Banks	Hasler	Meurant	Smith, N.
Birch	Hilt	Moir	Sowry
Bolger	Kidd	Munro	Steel
Bradford	Kyd	Neeson	Storey
Campion	Lee	Neill	Thomas

Cliffe	McCardle	Reeves	Thorne
Creech	McCully	Revell	Upton
East	McIntosh	Richardson	Whittaker
English	McKinnon	Robertson, J.	
Fletcher	McLauchlan	Rogers	Tellers:
Graham	McTigue	Ryall	Carter
Grant	Marshall	Simich	Peters, I.
Gresham			

Noes 24

Austin	Gregory	Prebble	Tirikatene-
Sullivan			
Blincoe	Hawkins	Robertson, H. V. R.	Wetere
Caygill	Kelly	Sutherland	
Cullen	Lange	Swain	Tellers:
Dalziel	Maharey	Tapsell	Braybrooke
Dunne	Matthewson	Tennet	Hunt
Elder	Moore		

Majority for: 27

Motion agreed to.

**29 Jul 1993, 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session, Hansard Vol 537, pp17040-17048**

**Treaty of Waitangi Amendment Bill** (Second Reading)

TREATY OF WAITANGI AMENDMENT BILL

Second Reading

Hon. D. A. M. GRAHAM (Minister of Justice), on behalf of the Minister of Maori Affairs: I move, That this Bill be now read a second time. The Bill has been reported back to the House by the chairman of the Maori Affairs Committee, and the Bill consists of only three clauses. Though small, it is a significant amendment to the Treaty of Waitangi Act 1975. Its purpose is to prevent the Waitangi Tribunal from recommending the return of any private land to Maori ownership or the acquisition by the Crown of any private land.

The need for the amendment arises from the Te Roroa report of the Waitangi Tribunal in April 1992. A division of the tribunal recommended that the Crown purchase certain private lands involved in the claim. Until that report, the issue had not arisen. Following the report, the Minister of Maori Affairs and I undertook to initiate an amendment to the Treaty of Waitangi Act to ensure that, in the future, the tribunal could not make recommendations in relation to private land.

I believe that the concerns raised by New Zealanders after the Te Roroa report was released had the potential to put the treaty settlement process itself at risk. Such a measure would have served no purpose at all.

The Bill will be a signal to all New Zealanders that private land is sacrosanct and is to be totally excluded from the recommendatory powers of the tribunal. Private citizens hold their tenure from the Crown, and they are entitled to look to the Crown to protect that right and that tenure. That right will now be enshrined in legislation for the protection of all private landowners in New Zealand. All New Zealanders will now be totally confident that this will be the law.

I should like to make clear that, although the tribunal will no longer be able to make recommendations in respect of privately owned land, it can still make recommendations in relation to Crown land or land owned by a Crown entity within the meaning of the Public Finance Act 1989, or land transferred to a State-owned enterprise under section 23 of the State-Owned Enterprises Act, or land transferred to a tertiary institution within the meaning of section 159 of the

Education Act 1989, or land owned by the Crown that is now vested in a Crown transferee company under section 6 of the New Zealand Railways Corporation Restructuring Act. The Waitangi Tribunal can also make binding recommendations relating to licensed land within the meaning of the Crown Forest Assets Act.

To put it simply, the Waitangi Tribunal will not have the jurisdiction to recommend that particular areas of privately owned land be acquired by the Crown for return to Maori claimants under the treaty settlement process. The Bill is consistent with the Treaty of Waitangi. It will not impinge upon the ability of Maori claimants to make claims to the tribunal in respect of injustices arising out of the Treaty of Waitangi.

At this point I want to congratulate the tribunal on the excellent work it is doing. The tribunal remains charged with the important role of hearing claims lodged by Maori who have been prejudicially affected by the acts, policies, or practices of the Crown that are, or have been, inconsistent with the principles of the treaty.

The tribunal's jurisdiction to hear claims that go back to 1840 also remains. The tribunal will continue to provide a forum for the airing of Maori grievances, some of which go back to the very foundation of our nation. When the tribunal determines that such a claim is well founded, the tribunal may still, under section 6(3) of the Treaty of Waitangi Act, recommend to the Crown that action be taken to compensate Maori claimants.

The role that the tribunal has been charged with is, at times, a difficult and complex task. The Bill will ensure that the tribunal continues with the commendable work it has done thus far in assisting with the settlement process. The Bill will make that task easier in that the tribunal's recommendatory powers are made clearer. It will continue to ensure the acceptability of the tribunal to the nation at large.

A claim made to the Waitangi Tribunal under section 6 of the Treaty of Waitangi Act 1975, and its final settlement, is a matter between Maori and the Crown. It is not a matter between Maori and private landowners or the Crown and private landowners. The Bill ensures that the two parties to the settlement process are and remain Maori and the Crown. I commend the Bill to the House.

Hon. K. T. WETERE (Western Maori): I have always taken a great interest in the Minister of Justice and the way he has handled such cases and the way he has handled the sorting out of the recommendations of the Waitangi Tribunal. After having listened to him, I think that I detected some ambivalence towards making the changes that are inherent in the Bill. That is primarily because they seem to be rather cosmetic.

As the Minister said, the Bill is intended to prevent the Waitangi Tribunal from making recommendations concerning private land. As I said in the introduction debate, the Bill is meant to appease the redneck voters who mistakenly feel that private land is at risk under the treaty legislation.

Opposition members will continue to oppose the Bill. Claims before the Waitangi Tribunal are based on breaches of the Treaty of Waitangi by the Crown, not by private operators. The move is at best meaningless, and at worst dangerous. The Treaty of Waitangi embodies the partnership between Crown and Maori. Part of its modern-day context involves the settlement of Maori grievances relating to the Crown's breaches of the treaty. By restricting a vital part of the claim settlement process, the treaty partnership, which is at the foundation of the process, is, in my view, undermined.

The Bill was introduced as a response to certain concerns regarding the recommendations of the Waitangi Tribunal. The Minister quite correctly referred to the Te Roroa report made in April 1992,

which in part recommended the return of land currently in private hands. The Waitangi Tribunal found that the land should have been set aside from Crown purchases and returned to Te Roroa rather than sold to private interests.

I know that some members have referred to that report, and, in part, to recommendations that were made by the Waitangi Tribunal, which are set out on pages 292 to 293 of that report, in paragraph 8.2. In part it stated: ``On the basis of our findings we recommend the return to tangata whenua of all the land which should have been set aside from Crown purchases of Maunganui, Waipoua, Waimanamaku and Wairau lands,'', and the findings are set out in findings paragraph 8.1.2 and 8.1.3.

In that same section reference is made to Manuwhetai and Whangaiariki and the report had this to say: ``We adopt Judge Acheson's findings in 1942 when he said that the `circumstances of this case . . . cry aloud for redress for the Natives. The two reserves are theirs and should be returned to them, no matter what cost to the Crown this may involve.' '. Reference is then made to Kaharau and Te Taraire: ``We apply Judge Acheson's findings referred to above to Kaharau and Te Taraire. We recommended that the Crown take all steps to acquire these lands in (a) and (b) above, which should not have been included in its purchases, and to return the same to the tangata whenua as hapu estates.' '. Those recommendations by Judge Acheson were quite clear.

Therefore I am trying to say that it is clearly a case in which the Crown had erred. It is clearly a case in which the tribunal was correct in its recommendations and findings made to the Crown about those parcels of land that the Crown had passed over and sold into private interest, despite those recommendations made by the Maori Land Court. That is why we have arrived at this Bill today.

Local landowners and others were critical of the report. They feared that the recommendations would result in the forceful confiscation of private land. The other major concern was that the value-affected properties would depreciate markedly as a result of such recommendations. The intent of the Government is that the Bill will address the above concerns. In clause 2 the Bill sets out the new section 6(4A) of the Treaty of Waitangi Act 1975, that: ``. . . the Tribunal shall not recommend . . . (a) The return to Maori ownership of any private land; or (b) The acquisition by the Crown of any private land.' '.

Sections 8A and 8I of the Treaty of Waitangi Act are excluded from the scope of the Bill. They deal with the land transferred or vested in State enterprises, certain educational institutions, licensed forest lands, and so on. The select committee altered the wording in the initial draft of the Bill to clear up the confusion that had arisen. In the first draft the Bill prevented the tribunal from recommending that the Crown acquire land held by any person. The absence of the definition of the word ``person'' caused some concern.

We had some submissions from Hugh Barr, who represented the Federated Mountain Clubs of New Zealand, and who tried to include the whole of the Crown estate, particularly forest parks, national parks, and the types of enterprises that make up the Crown estate. Quite frankly, one could see why he was advocating that position. I presume that it was because the Crown was about to make some decisions about the Ngai Tahu claim---and rightly so. He proceeded down that track making noises all the while---and making noises everywhere else, I am bound to say. He came to the committee in the hope that we would include that as part of the considerations that could be taken away from the Crown when it had regard to the recommendations and claims before it. Of course, that fitted the definition in their terms.

The amended version of the Bill states that the tribunal shall not

recommend that the Crown acquire or return to Maori any private land, so the definition of private land is included in the interpretive clause 1A of the Bill. The definition of person is as contained in the Acts Interpretation Act 1924. The use of the word ``person'' could include the Crown and Crown-owned entities as referred to---and I do not want to take up the time of the House---by the Minister when he made his second reading speech.

In the other form in which the Bill was introduced the tribunal would be prevented from exercising its powers of recommendation in areas that are directly relevant to the Crown's treaty obligations. The amended Bill has cleared up some confusion.

However, Opposition members still remain opposed to the overall thrust of the legislation. I am proud to have been part of two Governments that brought the Waitangi Tribunal into being and further extended its powers, particularly the powers that extended the date from 1975 back to 1840---and most members would know that---thus giving rise to where we are at today. As I said earlier, I am pleased that the present Minister in charge of treaty negotiations is carrying out the Act as we brought it in in respect of that date. However, I think there is some ambivalence about what we are doing today.

The final settlement of the treaty claims rests with the Government, not with the tribunal. I believe that it is important to pause and to consider that the tribunal is there purely to make recommendations to the Crown. I say again, as I said during the introduction of the Bill, that I find it hard to accept that a body of very responsible people who were given powers to make recommendations to the Crown---and that is all that it is---is being told now that it cannot do that. Quite frankly, if it was a judicial body that had similar powers, I know what it would be doing---it would be pursuing the matter.

We now have a situation in which the legal fraternity is the only group to gain rewards from the claims. I have no objection to friends on either side of the House who come from that fraternity, but we need to look at how the claimant can be treated with more credence than at present.

I understand that the Minister was to address members of the tribunal today, as I, of course, addressed them immediately before him. I found that the tribunal was ticking along fine, except that it was short of resources and the capacity to research and speed up the process of bringing the grievances, as it understood them, and the recommendations before the Crown. I suppose that happens as a result of having restricted resources for the provision of manpower by those who have the expertise to make those findings and recommendations to the tribunal, to the claimants, and to further the work of the tribunal. In my view that will add to the frustrations of the tribunal and we ought not at this stage to have taken the steps that we have taken, or that we contemplate taking.

It seems to me that people have moved away from the essence and the principles of the Act, and I say again that claims by Maori, including the recent Te Roroa case, are against the Crown, not against private landowners. Not one inch of private land has ever been or ever will be at risk. I say that advisedly because of some of the things I have said before.

We should also extend the education of the tribunal and that unit within the tribunal that tells the rest of New Zealand about its work, its functions, its objectives, and what it is all about, instead of the hype that has occurred, in particular from the Te Roroa case, and the likes of what we have heard in the South Island.

It does race relations no good when the cases that are being considered are of a recommendatory nature only. That is the reason

that I find it hard to understand why, except for political reasons, the Government has taken the steps to do what it has done. In my view, nothing in the Bill or out there in society suggests that we should take that action, except for political gain. There cannot be any other reason.

What do the efforts to save the Bay of Islands seat, the Hobson seat, or even that of Wallace, or some of those places, suggest? In my view it is political and it does no good for the country or for our race relations---the relationship between the Crown and Maori.

The Treaty of Waitangi Act has helped to build that partnership, and we should continue it. The Minister referred to the Act as being our founding document, and nobody disagrees with that, but now we have a little Bill of this kind that begins to do so, and that is absolutely wrong. Opposition members will continue to oppose the Bill as it proceeds through the House.

IAN PETERS (Tongariro): At one of my campaign meetings in 1987 the guest speaker was Sir Graham Latimer. At question time Sir Graham was asked to explain the meaning of the term ``tangata whenua''. Sir Graham's reply was: ``Yes; when my father was dying he called me to his bedside and he explained to me that tangata whenua is a man born to the land by God's design.''.

The next question was asked by a non-Maori: ``Could I be tangata whenua?',', and the answer was yes, if he had been born to the land by God's design he could be tangata whenua. Sir Graham went a little further and said: ``I have land on freehold title, and look out anybody who tries to take that land from me.''. It is that kind of feeling that has necessitated the Bill that is before us.

Over the years the Waitangi Tribunal has done a tremendous job. It has looked at cases presented to it, it has done its homework, and, up until the time of the Te Roroa case, there were very few objections to its recommendations. I accept what the member for Western Maori has said in respect of the Te Roroa claim. In my view it was a case apart from other cases in New Zealand.

Nevertheless, the tribunal stated something that created a stir around the country. People who had freehold title to land became concerned that the Government might take back that land to settle past grievances.

We could spend hours in the House talking about land that was taken unfairly, for sale, or whatever. I could go further and say that our own family had land that was taken, more than likely unfairly. But the point of the matter is that we have come to a point in our history at which we are saying very clearly, loudly, and strongly, that we cannot right yesterday's wrong by creating the same situation today. Therefore, to settle real fears in the community, the Government has introduced the Treaty of Waitangi Amendment Bill.

I do not want to prolong today's discussion except to say, as was said in the reporting-back debate, that it should be very clear to private landowners that the Waitangi Tribunal cannot recommend the return of private land to claimants. There is still confusion among many Maori people who think that, because of that, they are unable to make claims to the tribunal. To them I say that it is unfortunate that they think that; they misunderstand, because they can make a claim. But there is no way that this Government will require land that the Waitangi Tribunal has proved was taken unfairly to be returned if that land is in private ownership. That is why the Bill is a very small one. The matter is quite clear.

The select committee made some changes to spell out the intention more clearly. For instance, the definition of private land is: ``any land, or interest in land, held by a person other than---(a) The Crown; or (b) A Crown entity within the meaning of the Public Finance

Act 1989:'. .

The last part of this very short Bill, which is section 6(4A) in clause 2, states: ``Subject to sections 8A to 8I of this Act, the Tribunal shall not recommend under subsection (3) of this section,---(a) The return to Maori ownership of any private land; or (b) The acquisition by the Crown of any private land.'`.

One of the real disappointments for the select committee was that people who came before the committee---in particular, representatives from the Federated Mountain Clubs of New Zealand---had no feeling for the people who once owned the land. As a person who has dual blood within me it was a very real disappointment for me to find that in this country there are people who could certainly be referred to as ``Ngati Rednecks''. They have no feeling for New Zealand's history or the past, but, in their greed to worship the mountains and the hills, are not prepared to accept any settlements for Maori.

But if one looks at the submissions from Federated Farmers one can see that they were calculated, they were fair, they were reasonable, and they were forceful. When Federated Farmers understood what the select committee was doing and what it was saying, they were prepared to accept the committee's decision.

I conclude by saying that the Bill is important because of the climate out there amongst people. At present, among Maori and non-Maori there is a feeling of some disunity. There is a fear that what people may have gained in the market-place could be required to be returned. Equally, there are some Maori who claim that, because land was once theirs and it was taken from them unfairly, the Crown should return it to them. We are saying that we cannot continue in that way. We are not going to resolve yesterday's problem by creating today's problem.

I support the Bill, and I am pleased to see it go through its second reading.

Dr BRUCE GREGORY (Northern Maori): I have listened with interest to the participants in the debate so far, and I should like to touch on some of the comments that have been made by them.

I noted that the member for Tongariro made comments about an opinion that had been given by Sir Graham Latimer when he was asked what was meant by the term ``tangata whenua''. I tell the House that I accept with some reserve any definition that that particular gentleman gives when it comes to the matter of the Maori language.

The first thing that one has to note is that that term is a Maori term. He kupu Maori tenei tangata whenua. That means that the definition of it in essence relates to the Maori world. That is the first point that I need to make clear in addressing the term ``tangata whenua''. In other words, it is a Maori term, and it in essence relates to Maori people and the world from which they come. Strictly speaking, it does not refer to everyone, or to anyone who is born to the land of New Zealand, as many who are not of Maori origin would like to suggest.

I say, advisedly, that the term needs to be looked at in the context that it is a Maori term, that it requires a Maori definition, that it in essence refers to Maori people, and that we would need to invent another word if we want to include those other than Maori.

The previous speaker in the debate also said that the Bill was a little Bill. It certainly is short in length and in the number of words that are contained therein, but it packs a rather big punch, if I may use those bold words. The Bill may be small in the number of words that are contained therein, but its meaning contains a significant wallop, or kick---if I may use another word.

First, the Bill is a knee-jerk reaction to a recommendation that was put before the Government that arose out of the Te Roroa case in the Hokianga area of Northland. The recommendation that was made, and



the report to the Government, referred to certain private lands, although those were not the exact words used. The actual words used referred to a decision made by Judge Acheson---a recognised and revered judge of the Maori Land Court, certainly in Northland, and, I believe, throughout Aotearoa---who had made certain recommendations in respect of land that somehow had come within the Crown's ambit and had been sold to individuals as private land.

Te Roroa people strived for some generations to have the land returned to them. They were far-flung because they did not have enough land resource to maintain the livelihood of their people. Also, without the revenue that might have accrued from that land, they could no longer provide for the educational and health requirements of their people. That is the history that has influenced Te Roroa people. That circumstance arose out of a mistake that was made by the Crown, intentionally or otherwise, some years ago---I think it was way back in the 1940s. That was the injustice.

It is all very well to say that one cannot correct one wrong with another, but it seems to me that, when we look at cases of grievances in respect of the Treaty of Waitangi, it is the Maori who invariably suffers, and Government members would say without hesitation that Maori will continue to suffer, because they do not have it within them to make the correct, the just, and the right decision in respect of injustices in relation to land that occurred some years ago and that have affected Maori people.

The Crown has had a knee-jerk reaction to a recommendation made by the Waitangi Tribunal to the Government. The Government did not have the courage---and, in my opinion, this is the important thing---to act on the recommendation that was made by the tribunal. It did not have to implement what it said was the return of private land, but it did not have it in within itself to research, to analyse, and to look at alternative means whereby that injustice could be corrected so that Te Roroa people could be recompensed for the injustice that had been done to them in the past. The Government refused to take responsibility for bringing about the rectification of that injustice.

What has the Government done? It has produced this little Bill---as the member for Tongariro said. This little Bill takes away the recommendatory powers of the tribunal to help to resolve the issues that relate to cases that contravene the Treaty of Waitangi---in this particular situation, it is the case involving the land of Te Roroa people.

The Bill states that the tribunal can no longer make those sorts of recommendations. I repeat that the Bill relates to recommendations---not decisions that are binding on the Crown, but recommendations for the perusal of the Crown or the Government, so that, hopefully, it can come to some equitable and just decision in regard to the situation concerned. That is what the Bill does.

In my opinion the Bill contravenes the Treaty of Waitangi because no longer will anybody or any organisation have the right to examine an issue in terms of the Treaty of Waitangi. I understand that one of the functions of the Waitangi Tribunal is to determine those issues in respect of the Treaty of Waitangi. The Bill takes away one of the avenues by which that can be achieved; the tribunal can no longer pass on its recommendations to the Government for it to act or not to act, as it sees fit.

Second, the Bill gives a definition in respect of private land. I have to challenge the definition. If there is a contravention of the Treaty of Waitangi by one Maori individual, whose land is taken by the Crown---under the definition of private land such land in essence is owned by one individual---what will happen to that individual? If the individual owns that land, it would be his land held in private

ownership and there would be only one owner. If the land happens to be taken by the Crown, by whatever means, what redress will that individual have in respect of the return of that land if in actual fact the Crown somehow has obtained it by means that would be subject to research and examination by the tribunal? That is the second issue that I want to raise for the attention of the House and of the Minister who has introduced the Bill.

Under the Bill the tribunal is no longer able to respond to a matter by making a recommendation about land that is held in private ownership. I believe that that is a contravention of the Treaty of Waitangi. Those two elements make this small Bill an abhorrence, certainly to Opposition members. It is ultimately the responsibility of the Government of the day to address the tribunal's recommendations, which is all that the tribunal can do---with one obvious exception. But, for the purposes of this Bill, the tribunal can only provide recommendations to the Government. The Government saw fit not to action that particular recommendation, but to take away from the tribunal the ability to make recommendations in respect of private land. That is what this Bill is all about.

I believe that we do not need this Bill. In other words, if the Bill did not exist today the Government would still be charged with the responsibility of addressing the wrongs of any case that has come before the tribunal. Whether the land is private land or whatever sort of land, whether it is held in multiple ownership or whatever, the tribunal cannot make the decisions; it is the Government of the day that has the responsibility to make final decisions. But, no, along came this particular touchy problem: somehow, private land is a matter that the Government does not wish to address.

The Government has preferred to introduce this Bill, which I believe will be a brake on the functioning of the tribunal. That is a pity because I believe that the Waitangi Tribunal was doing an excellent job.

I believe that the Government's responsibilities in relation to the functioning of the tribunal are a matter for criticism. I have put forward many written questions to the Minister with regard to the various units within Government that deal with Treaty of Waitangi matters. It is quite interesting that just about every department has its own unit. I am not quite sure what they do, but they all deal with issues relating to the Treaty of Waitangi.

It seems that the tribunal, which was established for that very purpose, is being sidelined. Everything is being done except to allow it to work efficiently. The tribunal requires more personnel and it requires more finance to enable it to work in a manner that I believe would be a model for the rest of the world to follow. That is the tragedy that this Government has brought to the system of race relations in this country.

We have only to look across the Tasman Sea, which is part of Moana-nui-a-Kiwa. There are great problems in Australia with regard to aboriginal rights. I am sure that the Australians must be looking very closely at how to deal with land that is subject to the sorts of claims that no doubt will impinge on the nature of legislation---if it ever gets past the first hurdle, and it sounds as though there will be difficulties. But it is a pity that a model that was begun in this country, which, as I said, would have been a blueprint and a wonderful example for race relations right across the planet Earth, has been spoiled by the nature of the legislation that has been introduced, and the actions that have been taken, by the current Government.

I have every confidence in the workings of the Waitangi Tribunal. I believe that it is an interesting model in several respects. Not only is the tribunal discharged with the responsibility of defining

issues relating to the document of the Treaty of Waitangi itself, but also it has recommendatory powers. The people who front the commission are of pakeha and Maori origin. At the moment, those peoples are represented in equal numbers. So the tribunal comprises people with reputable legal brains and people who also have expertise in Maoritanga. Who better to bring down judgments that would produce recommendations that would befit this House?

CHRISTOPHER LAIDLAW (Wellington Central): I shall not take much of the House's time on this matter. I think that my Maori colleagues have laid out the reasons for the Opposition's objections to the Bill, and those reasons will be apparent to anyone who has been listening to the debate.

The Bill is small in every sense of the word. It is a mean-spirited Bill. The role of the Waitangi Tribunal in striking a balance in the whole process of resolution of claims is a very, very delicate one. The Bill is effectively a vote of no confidence in the tribunal's ability to do its job properly. But if one looks at the matter more clearly the Government, by passing the Bill, is in effect imposing a vote of no confidence on itself. In the end it is the Government that has to make the deal with the claimants. It is the Crown, not the tribunal, that carries the responsibility.

To legislate in such a way sends the wrong kinds of signals. As my colleague has said, it will send the wrong kinds of signals in terms of race relations. The Bill is badly conceived, and has not been thought out very carefully. The tribunal is not in favour of it---it is embarrassed by it. It is an impugment of the tribunal's integrity, and it is a clipping of wings that would never have enabled the tribunal to fly in any case. It is important that people remember that.

I listened to the Minister in his introduction and felt that there was a sense of half-heartedness about it. I suspect that the Minister has not had a great deal to do with the Bill. He is there as a sort of sponsor, and a reluctant one at that. I think that the Minister's performance in protecting the Waitangi Tribunal over the past 2 1/2 years has been a very good one. More resources ought to be made available to the tribunal.

The chief judge of the tribunal has said on many occasions---as politely as he could---that there is not much hope of making the sort of progress that the Government wants to have been made by the end of this century, unless the process of education can be pursued with a bit more vigour. That is an area of need that has not been addressed. It would have been nice---if one is to kick in the teeth of the tribunal in respect of making recommendations about private land---to see a better balance to the Bill by providing for the education of people.

I would have thought it better to try to have some kind of bipartisan agreement on the question of the accessibility of privately owned land. I remember very well that the previous Government stated, in no uncertain terms---Sir Geoffrey Palmer made it as clear as crystal in a way that probably only he could have done---that there would be no risk to any private landowner in the processes that the Crown would go through, and that the tribunal's role was to make recommendations. That could not be more clear.

I think that the Te Roroa case has really provoked the Government into a state of mild panic. I do not suppose that the measure would have been necessary had this year not been an election year, and I think that it is very unfortunate that the Government has decided to do this.

One could draw an analogy between this Bill and the situation that pertains to the opening up of hospitals for private patients. If the Government were to be consistent it would introduce legislation to

prevent private patients from having access to public hospitals, except under the most extreme conditions. If one is to be consistent, why not have legislation of that kind, because, in reality, that is exactly the same sort of situation? But will we see that kind of legislation introduced? I doubt it.

The tribunal has a proud record---we all know that. It is a shame that it should be impugned in this way, and also it is risky. The tribunal's ability to produce reports of the sort that the Government needs will be limited. I do not think that enough attention has been paid to the extent to which the tribunal will be able to produce a full and reasonably accurate report and set of recommendations on a particular case in the wake of this Bill. For that very particular reason alone, I object to the Bill.

The House divided on the question, That this Bill be now read a second time.

Ayes 42

Armstrong	Hancock	Moir	Smith, L.
Birch	Hasler	Munro	Smith, N.
Bradford	Hilt	Neeson	Steel
Creech	Kimber	Neill	Storey
English	Lee	Peters, I.	Thorne
Falloon	Luxton	Reeves	Whittaker
Fletcher	McCardle	Revell	Williamson
Gerard	McClay	Richardson	
Graham	McIntosh	Rogers	Tellers:
Grant	McTigue	Ryall	Carter
Gresham	Marshall	Shipley	McLauchlan

Noes 21

Austin	Gregory	Maharey	Wetere
Blincoe	Hawkins	Matthewson	
Braybrooke	Hodgson	Prebble	Tellers:
Clark	Kelly	Robertson, H. V. R.	Hunt
Cullen	Lange	Sutherland	Laidlaw
Dunne	Laws	Swain	

Majority for: 21

Bill read a second time.

## 12 Aug, 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session, Hansard Vol 537, pp17447-17457

### Treaty of Waitangi Amendment Bill (Third Reading)

#### TREATY OF WAITANGI AMENDMENT BILL

##### Third Reading

Hon. DOUG KIDD (Minister of Maori Affairs): I move, That this Bill be now read a third time. I shall report back the Bill from the Committee of the whole House. The Bill, much more so than any other, can be simply and completely stated in a few sentences. It states that the Waitangi Tribunal is not to recommend the return to Maori ownership of any private land or the acquisition by the Crown of any private land after the tribunal has completed the hearing of any claim before it. To give absolute completeness: private land is defined simply as any land other than land in the name of the Crown or land in the name of a Crown entity under the Public Finance Act---which, for the benefit of a lay audience, can be described essentially as the Government's quangos.

That is what the issue is about. The Bill, as reported to me from the Committee, does not have anything to do with limitations on people prescribing their claim to the tribunal. All claims to the Waitangi Tribunal relate to past acts and omissions of the Crown. Often the acts and omissions of the Crown were in relation to land that the Crown subsequently disposed of into private ownership.

It is the acts and omissions of the Crown that fall to be investigated by the tribunal, but henceforth in considering how to resolve the claim and what remedies to recommend the tribunal will not be able to recommend the return to Maori ownership of any private land or the acquisition by the Crown of any private land that it might thereafter hand over to Maori. So that is the issue described neatly and directly. It now falls for the House to determine that the Bill be given a third reading.

Hon. K. T. WETERE (Western Maori): The Minister's speech was very short, and it showed his non-enthusiasm for the Bill. It is probably one of his pieces of handicraft that will not get many Brownie points and will not make an impact and really shake this country apart. The functions of the tribunal will carry on regardless, and I say to the Minister that the tribunal will continue to make those recommendations despite this Act.

As I said during the introduction of the Bill and in the Committee, one would have to ask how many people support the Bill and how many are against it. Except for a few people up north, who are mainly farmers from the northern branch of Federated Farmers and the constituents of the member for Bay of Islands---

John Carter: No, not my district.

Hon. K. T. WETERE: Well, they come from up that way, anyway. The fact is that they are the only ones who seem to be very interested in the Bill---and one can appreciate why when one considers what the Minister and his colleagues have said about the valuation of land and the effect that such recommendations have had on it.

There is no way that the Minister and his colleagues can escape from the fact that the recommendations are simply recommendations to him and to his Cabinet colleagues; they can decide whether they should take each recommendation forward, have it enacted, or whatever. The Minister can have no regard for it at all if he so desires, because, after all, it is only a simple recommendation. I do not recall any other legislation that had such powers and then finally had its wings curbed by the statement: ``Look, you cannot recommend to us that this land or that land should be handed back.''

When I listened to the Minister of Justice and all the other speakers it became clear in my mind that they were not altogether unhappy about whether the Bill proceeded or otherwise---except to say: ``Don't tell us that you should put private land down as a recommendation to be considered by the Crown.''. That is the impression that I got. One cannot say any more than that, but I have to say that there was, in my view, very little enthusiasm for the Bill. I do not think that it will turn this country inside out.

At the end of the day the tribunal will continue with its work of looking at grievances that go back as far as 1840. I guess that the purpose of the principal Act was to give our people yet another vehicle with which to inquire into those matters. It is fair to say that private land may not be included in the considerations of the tribunal, but of course it will. At the end of the day, that is not important. The question that is important is the Crown's---

Rt. Hon. David Lange: What the Government will do.

Hon. K. T. WETERE: Yes, it is what the Government does and how effect is given to that by the Crown at the time. So really it is the Crown that will decide finally how that outstanding issue or that grievance can be treated. That vehicle was put there as another means.

People have referred to the tribunal as being a judicial body. It is not, as we all know; it is simply another vehicle and another forum where people can be heard on their own terms. I should like to think that since the tribunal's expansion in 1985 it has been able to consider more cases than in the past and to look realistically at

areas of grievance. I suppose that it was not unexpected that this sort of thing would arise.

I feel that in the end it is the way in which the recommendation was put to the Crown that the Government has objection to. But that does not negate the fact that at the end of the day it is the Crown and the Government that have to make up their minds about whether they accept the recommendation from the tribunal, and about how they might bring about a satisfactory decision.

I want to say again, as I said last evening, that the Government has at its hands various ways and means of resolving those issues. Land is not the only way to settle those outstanding grievances. Previous Administrations, even the Labour Administration, have used many forms for those particular purposes.

During the select committee hearings people raised the issue of the Crown estate. Last evening, the Minister of Justice said that it would also be considered but that one would have to consider how that might be done. I understand that there has been quite wide discussion about that particular matter as it has infringed on some of our organisations that have had very important feelings and negotiations about the Crown estate, particularly regarding whether conservation areas should be used for settlement purposes. As I said last evening, I thought that that would probably have a very low priority, but it ought not to be outside the scope of consideration.

We should at least acknowledge that, as in many other areas where the activities of the Crown impinge on the Treaty of Waitangi, the proactiveness of both the Crown and Maori should continue. I think we should remember the treaty as an attempt to create a better relationship, a better understanding, and a better partnership of working together in all of these areas.

For example, it is fair to say that, while the Crown estate that I referred to earlier has under its control those conservation areas, we ought not to ignore the involvement of our people in those areas; that involvement has been established by the Conservation Act and the relevant boards. We cannot afford to allow those discussions to be let loose, as they have been in past months. The Minister will appreciate that, particularly down in his region where one or two organisations have taken exception to some of the statements made by some of our people, this is probably an opportunity to find more resources in education about the results and the recommendations of the Waitangi Tribunal so that the public is well aware of the work of the tribunal and of its findings and our people are better educated as to what that is all about.

It is the first time that we have got suggestions as outlandish, if I could say that, as some of those from the north, particularly, which came down very hard on recommendations that, in my view, were realistic, given that the decisions were based on the Crown having erred.

I refer to the Te Roroa case, which is well known to the House and which gave rise to the Bill, and regarding which there was no doubt in the minds of all members on the committee and even in the House that the Crown had erred. I simply want to say again that that happens to be a fact.

It also happens to be a fact that those areas of land provisionally set aside by the court at the time of Judge Acheson's rulings are part of an area of private land that is now under discussion, and that has given rise to the Bill. I say to the Minister that I do not believe that the Bill will make any great difference, and I feel that it is not necessary to have legislation of this kind.

IAN PETERS (Tongariro): In the second reading of the Bill I referred to the Royal Forest and Bird Protection Society of New

Zealand as being alongside the Federated Mountain Clubs. Unfortunately for me I was incorrect and they were correct, and I do offer an apology to the Royal Forest and Bird Protection Society for linking it to that other group.

However, in connection with what I have to say today, I do not in any way retract anything I have said about the society in respect of the land of the Ngati Porou on the East Coast. What I said not only stands but, I think, has probably been reinforced. However, as far as the other statement I made in the House is concerned, I do apologise to the society.

Labour members are obviously still opposed to the measure. I do agree that the legislation is very small in its intent, but I do want to reiterate today the reasons that the Bill is before the House for its third reading and why it will be passed by the whole of the House.

I want to go back a little bit to the findings of Judge Acheson in 1942. He said that: ``The circumstances of the case cried out loud for redress. The two reserves are theirs and should be returned to them, no matter what cost to the Crown this may involve.''. I want us to keep that thought in our minds, and I say that, in my view, the Waitangi Tribunal has done an outstanding job over the years. It has made recommendations that the country and Parliament could accept on many occasions.

I suppose that, by bearing in mind what Judge Acheson said in respect of the Te Roroa case and by following very closely what he said, the tribunal came on rather more strongly than it has done in the past, and, of course, the National Government did not accept that privately held land could be returned in that way.

Some people say that the Bill is not important. What is important is that Parliament makes it clear to private landowners that land held by private title is sacrosanct. The democracy that we believe in and we vote for is based on that. It is essential that, in an age when there is some degree of rift between the races---much of it real, some of it built on perceptions, and some false---and because of the fact that much of it is real, we do need to send out to those who have purchased land by way of contract, deposits, and money, the message that what they have is theirs and that it cannot be taken from them.

When one looks at this small piece of legislation one is convinced that if we are to send out the right signals to New Zealanders the Bill is essential. I would be the first to concede that, in some ways, it is rather unfortunate that we have to do it. I am sure that, even if we had not written this sort of amendment, the Waitangi Tribunal might not have recommended again what it did in respect of the land north of Dargaville. However, because the tribunal did what it has done, the Government has no options really but to send out some very clear signals to all New Zealanders---not only to non-Maori but also to Maori.

Many Maori people are private landowners---in fact, probably far more than one would think---and those people also have a right to the assurance from the Government that what they have is theirs unless they choose to dispose of it in whichever way they wish. I do not want to say much more than that, except to say that, as far as I am concerned, the Government has sent out a very clear signal to New Zealanders that that which is theirs by way of contract will be safeguarded.

I will close by saying that I am rather surprised that the Labour Opposition will go against the measure, and I do not know how it will answer to the public in the public arena. The Government is certainly saying that private land is sacrosanct---that is what this democracy is built on, and I am very pleased to be part of it.

Dr BRUCE GREGORY (Northern Maori): One of the interesting developments in the third reading of the Bill has been the paucity, the shortness, of the speeches made by the Minister of Maori Affairs and by the member who has just preceded me.

Ian Peters: It's a small Bill.

Dr BRUCE GREGORY: Yes, that is quite correct. It was obviously a short speech because it is a short Bill. Rather, perhaps it would be appropriate that the Bill should be non-existent. To use a Maori phrase, it should have been a kehua, and it may very well become that in the near future.

The Bill has arisen out of the fears of the Government, without any great in-depth thinking as to what they were about. It has arisen from the fears of and the forces of the Federated Farmers, and the farming community. It has also arisen because of the fear that the tribunal---in this case the Waitangi Tribunal---had the powers to recommend.

It seems to me that the difficulty that the Government has is that it has overshot the mark with a Bill that makes such an impact on the issue of a tribunal that has purely recommendatory powers in that regard. The Waitangi Tribunal is an organisation that will be a blueprint for the future of this country. It is not a body of the judiciary; it is composed of representatives of the Crown and of Maori people. They are people with mana, knowledge, and expertise both in legal terms and also in terms of cultural understanding.

The tribunal has proved itself worthy of the recommendations that it has made in the past. Unfortunately, it is underfunded and underrepresented in terms of the expertise that it requires to carry out its work more quickly in order to address the many cases of grievances that have come before it in respect of the Treaty of Waitangi.

In my opinion the Bill destroys the Waitangi Tribunal. It destroys the Waitangi Tribunal because the tribunal will no longer have the freedom to examine in detail, and it will no longer have the power to make recommendations that may affect a grievance that may be brought to it under the Treaty of Waitangi. I believe that that is the worst thing that the Government could have done, because it does not bode well for the future.

The purpose of this tribunal was to bring about the type of nationhood that began with the document itself, way back in 1840. I believe that the present Government has done that; it is but a retrograde step in the nationhood of this country, and the Government will suffer for it in the future. We will work on this when the Labour Party becomes the Government, and that may be in the not too distant future.

The question of whether the Government of the day acts on the recommendations of the Waitangi Tribunal is not a matter that the Waitangi Tribunal can, in itself, deal with. It is important that the tribunal, in whatever work it does in respect of the grievances, has the record right. If, in the pursuance of that ideal, it makes recommendations that suggest that those are the steps to be taken in respect of those issues, it is in the records of this country that that must be made known.

The Bill that is before the House actually prevents that from taking place. I believe that if the tribunal in its wisdom exercises its recommendatory powers on the basis of the history of the land that has come before it---in this case privately owned land---it would be a curb on the responsibilities of the tribunal regarding the Treaty of Waitangi if it should no longer have the ability to make a recommendation---not a decision---with respect to that privately owned land.

On that basis, this Bill should be thrown out. It is a curb on the



responsibilities that have been given to the Waitangi Tribunal to produce a just and fair recommendation that is based on all the factors at its disposal or that can be brought to it, so that it can think on the issues in the full knowledge that it is the Government of the day, not the tribunal, that makes the final decision.

However, the Government is lacking the fortitude and the courage to pursue the nationhood that I thought we all aspired to---certainly the Opposition aspires to that, but, because of the production of this Bill, I am not so sure that the Government aspires to that.

The responsibility of the Government would be to look at the recommendations of the tribunal and to say what the options are. We know that the question of private ownership is one that is held dear in terms of the European concept of land ownership, and that its intention is to pursue that. In their thinking, it does not matter that the purpose of the Treaty of Waitangi also has elements in it that refer to the taonga of the Maori people, and to the redress that I believe Maori people regard as being a fair redress. I do not say that lightly, but I believe that they are looking for and considering the solutions that will in most cases not necessarily impinge too much on both partners. I think that they are prepared to come to the party to discuss those issues.

I believe that the case in respect of the Te Roroa people has been of that nature. Suddenly, one gets a slap in the face and is told: ``That is enough in respect of privately owned land.''; or one says that if that is the recommendation it may be an issue that needs to be pursued with the Te Roroa people. However, I am not aware that the adamant stance that the Bill indicates has been the direction in which they would have pursued this issue.

The Bill, in its paucity of words and paucity of substance and justice, refers basically to two issues. The first is the question of the definition of privately owned land. If a grievance dealing with the Treaty of Waitangi refers to Maori land that belongs to an individual Maori, such a grievance may very well be in the hands of the Crown. How does one address that issue? In essence, in terms of the grievance the definition would be ``land owned by one Maori''. It appears that an individual Maori no longer has redress under this Bill to own land individually, because the land is in Crown ownership. The tribunal would not have the power to make a recommendation, if it saw fit and right on the evidence it had before it, that ``Mr Maori Man'' was the sole owner of the piece of land that somehow the Crown had obtained in the past by, perhaps, not necessarily the right means.

How is that issue going to be addressed? In essence it is referring to private land as land that is owned by an individual. If the case that is brought before the tribunal happens to involve land that belongs to one individual Maori, what does one treat that land as? For the purpose of this exercise, it is held by the Crown. Those issues ought to be addressed by the Bill.

Hon. Mrs T. W. M. TIRIKATENE-SULLIVAN (Southern Maori): On the surface, the Bill appears to make only cosmetic changes to the principal Act. However, it does carry a strong symbolic message by limiting the independence of the tribunal. Primarily, the Bill is a political response to the concerns of those voters who view the tribunal with suspicion.

The Bill will also create some problems for the tribunal that may, in turn, hinder the claims settlement process. It is really a muzzling of the Waitangi Tribunal. By prohibiting the tribunal from recommending the return of private land, the Government is sending the tribunal an explicit message that it is unhappy with some aspects of its deliberations and will limit its jurisdiction accordingly. Instead of trying to resolve the matter through mutual agreement, the

Government is wielding a blunt legislative instrument that can impinge on the independence of the tribunal.

The role of the tribunal is to assess where an injustice has been perpetrated by the Crown and to recommend how that injustice may be remedied. Restricting the recommendatory powers of the tribunal does not aid the settlement process. If the tribunal's recommendatory powers are limited, that could inhibit its work in identifying where the Crown has committed an injustice. That would undermine the major advances that the Labour Government made to address vital issues of justice for Maori. It could also incite unnecessary misunderstanding and conflict, and that would be most regrettable.

Attempting to muzzle the tribunal may limit the tribunal's ability to reveal injustices, and that would be a very great shame. I claim that this Bill will hinder the tribunal in its claims settlement process. I consider that to be a regrettable effect.

I was one of a small caucus committee of four that recommended the setting up of the tribunal to the Minister of the time, who was not a member of that small group. I consider that this Bill is a knee-jerk reaction to a case that has now passed. The Bill is coming subsequent by so many months to the case to which it was a response that the Bill will be of no effect at all to that case.

In applying to all future cases it will follow a regrettable course of action. It is likely that the work of the Waitangi Tribunal and the claims settlement process on some cases will be severely hindered by the passage of the Bill; certainly they will be hindered to some degree.

In the report of the Manukau claim the tribunal recommended that the Crown negotiate for the acquisition of certain sites. As the current wording of the Bill makes no reference to compulsory acquisition of private land, the tribunal would be unable to make recommendations similar to those it made in the Manukau report, for instance.

The effect would be that, even when the person who owned the land or had an interest in the land was willing to enter into negotiations with the Crown for the sale of that land, the tribunal would be legally prohibited from making such a recommendation. That would be utterly ridiculous and totally counter-productive if the owner of the private land was a willing seller and the tribunal could see that that was a way of solving the problem.

This Bill is about the resolution of a problem. Yet that is a resolution on which both parties would agree; the Crown would have the right; the tribunal, in its perspicacity, would see the solution after researching the case; but the tribunal would be prevented from making such a recommendation because of the Bill. Therefore, I cannot support the Bill.

The problem that I have referred to would create a ludicrous and possibly costly situation, with the tribunal being unable to point out the means of settlement of a claim. How ridiculous! The tribunal would see it; it would have researched it; the owner of the private land would be willing and very happy to resolve the matter by making the land available; but, under this measure, the tribunal would not be able to do that obvious thing. It is a regrettable situation. I really implore the Government to reconsider the Bill and to withdraw it, because it will possibly prevent the course of justice, and peaceful and sensible resolution in future cases.

The prime purpose of the amendment made to the Bill during the select committee deliberations---although I was not able to attend any of the meetings as I was on the Electoral Law Committee---is to reassure those who feel threatened by the treaty and by the tribunal. That is not the purpose of legislation; that is a political purpose, and must be acknowledged as being blatantly so. Therefore, I say that

the Bill is motivated by political purposes rather than by any moral or practical end.

The message the claimants will receive is that the overriding political message of the Bill will probably drown out the negative messages it sends to the treaty claimants. However, for the claimants the perceived objectivity of the Waitangi Tribunal will be adversely affected; I see it as such. The perception of the commitment of the Government to settling treaty claims may also be damaged.

Therefore, the Government should think carefully; it should think of that case to which I referred---which will no doubt come up time and time again---in which, in researching a case for Maori claimants, the Crown perceives that there is some sacred land, some special land, land of supreme significance to those claimants that should have been reserved for the claimants by the Crown in times past. It was not. The land is now privately owned, and the private owner is happy to give up that land.

I can think of potential cases like that, in which private owners are only too happy to give up their land now that they know its significance to Maori. But the tribunal, because of this Bill, will not be able to make that obvious recommendation.

Therefore, the Bill is not only unnecessary and without legitimate purpose, it is politically contrived and it could prevent the course of justice and a common-sense resolution of future problems by the tribunal---a body of competent men and women much praised by the community throughout their years of service. It would be a great pity to prevent those people from bringing their collective wisdom to the resolution of a problem. The Bill should be thrown out.

TONY RYALL (East Cape): I compliment the member for Southern Maori on her hard-hitting, succinct, and obviously thought-out contribution to the debate. However, I should like to bring a personal perspective for a few minutes, and just say to the member opposite that I do not believe that we can resolve the grievances she spoke of in an atmosphere of fear and distrust. We must have an atmosphere of understanding and security, not of fear and distrust.

I know that in my own electorate at this time a number of iwi have put in claims on large amounts of land, and that is causing some concern to those who have private title---both Maori and pakeha. I think it is important that the House give those people a message that they can be sure that the Crown will negotiate with those iwi in an atmosphere of security and certainty for those owners.

Hon. Peter Tapsell: The Government didn't need to do this.

TONY RYALL: Well, maybe that is an argument, but I would say that those people need to have an indication from the House that they have some certainty and that they need not cause themselves distress or promote disunity in their community because of the claims. They need to know that their private land is safe.

I also believe that recommendations regarding private land that may flow if this Bill is not passed could raise expectations unfairly, and unfortunately, because when a recommendation comes through that such and such a piece of land should be purchased expectations rise; people think that a grievance is going to be solved, but if a price is not settled then that expectation has been quite improperly raised.

I also say to the member that nothing in this Bill prevents the Crown from acting on a recommendation and actually doing something that she suggested earlier on. It is just that no recommendation would come forward, and those who do have private title can be certain that their land will not be affected unduly by any of these recommendations. We cannot resolve these problems in the atmosphere of fear and distrust that grows from any of these claims.

Hon. PETER TAPSELL (Eastern Maori): The Opposition is opposed to

the Treaty of Waitangi Amendment Bill. Indeed, it is strongly opposed to it, and in due course a Labour Government will remove it. Opposition members are opposed to it on the grounds that it is an irrational response---a knee-jerk response---to quite erroneous concerns that have been expressed by a certain group of people.

The Government owed it to the nation to explain more carefully the powers of the tribunal, the functions of the tribunal, and that private land was not at risk as a result of the recommendations of the tribunal.

Opposition members are opposed to the Bill on the grounds that it quite unnecessarily constrains the tribunal in making what might well be the appropriate response to a particular claim. We are opposed to it because it will do nothing to settle certain Maori grievances, and we are opposed to it because it will almost certainly cause greater expense for the Government.

The concern that has been expressed by many people arose following the recommendations of the tribunal in respect of the Te Roroa case. During the Committee stage I expressed a personal view that it was a pity that the tribunal had chosen to use the words that it did use in that recommendation. It stated that the Crown should use all means to acquire the lands in question. The implication clearly was that, irrespective of what the actual powers of the tribunal are, ultimately the Crown should use its confiscatory powers.

Sitting suspended from 5.30 p.m. to 7.30 p.m.

Hon. PETER TAPSELL: Before the dinner break I had expressed the view that it was a pity and unfortunate that the Waitangi Tribunal had chosen in its Te Roroa report to use the words: ``. . . that the Crown take all steps to acquire the land in question.''. It was clear that those words were open to the erroneous implication that if the Crown failed to purchase the land it should use its confiscatory powers to acquire it.

I do not believe that that was what the tribunal meant, I do not believe that that was what the tribunal intended that the Government should do, and I am quite certain that by now the members of the tribunal themselves realise that that was a mistake.

The real pity is that when the Te Roroa report was made public---and the Minister of Justice and his advisers must accept some of the responsibility---it was not realised immediately that those words would cause dangerous misunderstanding, and the opportunity was not taken to clarify the matter, setting out beyond all doubt the Government's response to the Te Roroa report. In a way, the Bill before us is an indication of an error of omission on behalf of the Minister of Justice, and an act of panic on behalf of the Minister of Maori Affairs and his colleagues---but I leave it at that.

I mentioned earlier that in my view it was a mistake to constrain all the opportunities available to the tribunal in making a recommendation. There are occasions on which the most obvious way in which to obtain a settlement is for the Crown to acquire, by way of purchase from a willing seller, a piece of land for transfer to the Maori complainants. For example, in the course of its investigations the tribunal might become aware that the present private owner of a small burial ground was amenable to selling that land to the Crown, and what could be more reasonable than that the tribunal should set that out in its recommendations? In my opinion it is a pity and it is a mistake to constrain the opportunities for the tribunal to make a fair and unfettered recommendation.

Moreover, it is my view that in the course of time the tribunal will learn to set out very clearly its recommendation in the body of the report, and to make obvious to the Government the course that it suggests should be taken. The mere fact that that recommendation will

be left out of the recommendations at the end of the document will not in any way mislead anyone; it will do nothing to allay the concerns of those non-Maori people who presently are concerned, and it will certainly do nothing to diminish the resolve of Maori people.

The entire Te Roroa claim, which gave rise to a degree of concern---and which in due course gave rise to this Bill---was a disaster of very great moment for New Zealand. It is a pity that, from the earliest days when the Crown acquired that land unjustly---in all fairness, I think by mistake---it did not take immediate steps to correct that mistake. It did not do that, and a subsequent sitting of the Maori Land Court pointed that out. For some reason that remains obscure, the Maori Appellate Court overruled the decision of Judge Acheson of the Maori Land Court---again, a mistake. More recently, the present owner, who, as I have said on many occasions, has acted quite unscrupulously---as Minister I investigated the matter thoroughly---and the descendants of the former Maori owners have gradually fallen out.

I am bound to say that in my opinion the beneficiaries of the original owners, Te Roroa, have acted throughout with great restraint and great courtesy, and have maintained a rigid adherence to the law in the face of very great provocation.

John Carter: Not all of them.

Hon. PETER TAPSELL: Absolutely. The present owner was arrested by the police; no Te Roroa member has ever been arrested.

The present Bill is a mistake, but, looking back, there has been a series of mistakes. If the matter teaches us nothing else it ought to teach us that if the Crown becomes aware of a mistake that it has made it has a responsibility to correct it forthwith. Had the Crown---and, I suppose, the Minister, representing the Crown---from the very earliest moments until now corrected those mistakes, we would not be placed in the present position. Mistake after mistake has been made.

It is my opinion that the Minister is making yet a further mistake in passing a Bill that will do no good and that will probably cause harm in the future. When the Labour Party next becomes the Government, it will remove the measure from the statute book.

CHRISTOPHER LAIDLAW (Wellington Central): I think the Bill is a sad, unfortunate, and rather mean-spirited little piece of legislation---many other members have noted that and have said so. I do not think that the Bill is necessary; it is wielding a very large sledgehammer to crack a very small nut.

Hon. Peter Tapsell: It may not even crack the nut.

CHRISTOPHER LAIDLAW: It may not; in fact, it may well create other nuts that are unable to be cracked, if I can enlarge the metaphor.

I have to say that I think that the Bill will set back very substantially the job of the tribunal in its efforts to find its way around some of these particular cases. The Te Roroa case was a sad one, and reflected badly in a variety of ways. Genuine attempts were made at various stages and with some goodwill to try to resolve matters, but those attempts have not come to a great deal. Some ham-handed attempts were made to try to find a financial solution, and those also came to very little.

The case brought out the worst in people. There was really a need for the tribunal---and the Government---to resolve it, but I do not think that the resources were available for the tribunal to do the job. One of the difficulties is that the tribunal has not been given the resources to carry out the kind of reconciliation work that it needs to do.

In the end, the whole process of settlement of claims of that kind depends on a spirit of reconciliation. I do not think that this Bill will advance that cause one iota. In many respects it will harden

hearts in various parts of the country. It will give some comfort to those who clearly have sought it from the Government---those who have irrational fears about the loss of their private land. It is a great shame that the Government has decided to give in to that pressure.

I am surprised that the Minister of Justice so enthusiastically supported the Bill last night. I listened to what he had to say, and I found it difficult to understand the rationale. In reality, this Bill should not have been introduced; it has set back the quality of the process of reconciliation of many of those claims, and we will see the results of that in due course. The Opposition is opposed to the Treaty of Waitangi Amendment Bill. Indeed, it is strongly opposed to it, and in due course a Labour Government will remove it.

Hon. DOUG KIDD (Minister of Maori Affairs): In reply I shall briefly address some of the comments made by Opposition members. First, it was not mentioned tonight---in contrast to last night---by the member for Northern Maori that not only did he oppose the Bill but also he had asserted that a Labour Government would repeal it.

It was only when the member for Eastern Maori rose just before the dinner break that it was said, and I quote: ``The Opposition is strongly opposed to the . . . Bill . . . and in due course . . . will remove it.''. I take it that the record shows that a Labour Government would repeal the Treaty of Waitangi Amendment Bill---which we hope will become an Act in a few minutes---and that private land again would be the subject of chaos and confusion.

I say to the people of New Zealand that this Government Bill states quite simply that the tribunal shall not recommend the return to Maori ownership of any private land, nor shall it recommend the acquisition by the Crown of any private land. It defines private land as everything other than land in the name of the Crown itself or in the name of a Crown entity under the Public Finance Act, which I translated in my opening speech as meaning land held in the name of the various Government-owned quangos.

Tonight, at the end of the debate, there is a division that previously was not there. It has always been the consistent policy of the National Party that what is stated in the Bill is the fact. The Bill simply gives effect to our policy in law. There has been no change and no movement. At the time that the Bill was introduced, Government members thought that that was also the Labour Party's policy, as had been evidenced by the actions of a previous Labour Government. It is quite clear tonight that the Opposition now has a different policy.

The Opposition's policy---as stated by the member for Eastern Maori---is to repeal the Act and to make private land available for settlement of Treaty of Waitangi claims.

Hon. Peter Tapsell: The member knows that that's not true.

Hon. DOUG KIDD: The honourable member was not here when I said this before so I repeat it to his face. He said: ``The Opposition is strongly opposed to the . . . Bill . . . and in due course . . . will remove it.''. It was the absence of a simple, clear statement in law that gave effect to our policy that led to the shambles that arose out of the Te Roroa report. It is important for the House and the country to note that.

Opposition members are perfectly entitled to their point of view, and, to their credit, they have come clean tonight and have made it clear. We can now end the debate with the people understanding where the National Government stands and where the Labour Opposition stands, and there is a vast difference between the two positions.

The House divided on the question, That this Bill be now read a third time.

Ayes 41

Anderson

Hancock

Neeson

Simich

Armstrong	Hasler	Neill	Smith, L.
Banks	Kidd	O'Regan	Steel
Burdon	Lee	Peters, I.	Thorne
Cooper	Luxton	Reeves	Upton
Creech	McClay	Revell	Williamson
English	McCully	Richardson	
Falloon	McIntosh	Robertson, J.	Tellers:
Fletcher	McTigue	Rogers	Carter
Graham	Marshall	Ryall	Grant
Gresham	Maxwell	Shipley	
		Noes 16	
Blincoe	Hodgson	Swain	
Dalziel	Kelly	Tapsell	Tellers:
Dunne	Laidlaw	Tirikatene-Sullivan	Hawkins
Elder	Lange	Wetere	Hunt
Gregory	Robertson, H. V. R.		

Majority for: 25  
Bill read a third time.

**21 Sept 1995, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 550, pp9082-9106**  
**Debate – Urgent Public Matter – Takahue School – Occupation**

DEBATE---URGENT PUBLIC MATTER  
Takahue School, Far North

Mr SPEAKER: I have received a letter from the member for Tauranga seeking to debate under Standing Order 92 this morning's events at the Takahue School in the Far North. These events are a particular case of recent occurrence which involve ministerial responsibility and, given their importance, I think that it is reasonable to allow a debate to take place on them today. I therefore accept the application. The letter reads as follows:

Hon. Peter Tapsell, MP

SPEAKER

Mr Speaker

I seek under Standing Order 92 to move that the House take note of a definite matter of urgent public importance, namely the events at Takahue School in the Far North. As you will be aware, the school buildings, in what can only be seen as a rapid deterioration of an already festering situation, were burnt down this morning and a number of people arrested.

It is my view, and that of the Member for Northern Maori in whose electorate these events are taking place, that this is a situation capable of developing into more serious conflict unless urgent action is taken to address the issues involved.

Clearly, being linked to the matter of Treaty settlements, it is both one that involves ministerial responsibility, and one where calm and considered negotiation is far more appropriate than the kind of confrontation it has involved to date. A Parliamentary debate on this matter would serve to highlight aspects of the matter which might otherwise be ignored for a longer period with possible dire consequences.

Yours Faithfully,

Hon. Winston Peters MP

Leader of New Zealand First

Hon. WINSTON PETERS (Tauranga): Thank you for your ruling. I move, That the House take note of a definite matter of urgent public importance. Earlier this year on 8 April the Evening Post carried a very significant article that stated that moves were being made on

the Maori occupation of three sites. In this article it stated:  
``Moves are being made today to settle three of the five Maori occupations of land around the country. Maori groups are occupying Wanganui's Moutoa Gardens, the Rotowhio Marae at the Maori Arts and Crafts Institute in Rotorua, the former Tamaki Girls College in Auckland, a disused school at Takahue, south of Kaitaia, and the Tieke Hut on the Whanganui River. Those were events that were emerging or had emerged, and which required a responsible Government to act in the interests of harmony in this country, in the interests of law and order in this country, and to do something about them. It is our submission that this National Government has done nothing, on countless occasions, and the cost of that apathy, the cost of inertia and inaction governmental, is bad for New Zealand. It is bad for the New Zealand taxpayer. It is bad for justice in this country, and above all, it is disastrous for race relations.

We like to think that we are one country comprising a number of different cultures, the original two being, first, Maori, and then a European or British culture that came to this country. We are concerned, from the point of view of New Zealand First, that this Government is seeking to turn, by inertia, apathy, and inaction, an issue that should have been resolved, into a political issue to its advantage. We are determined that something should be done about it.

To put the point, I can recall in 1986 the Titford case breaking in this country. Mr Titford was a farmer at Wanganui Bluff, north of Dargaville. He bought a section of land, a farm in fact, on which it was determined later on, by the emergence of Maori protest, that an error had been made on the title. Those cases are very clear. They do not need to be addressed by the Treaty of Waitangi Tribunal. It was simply a matter for the Minister of Justice administering the Land Transfer Office---then Geoffrey Palmer---to get off his backside and do something, such as going up to find out what the grievance was as soon as possible, and giving a sound and solid commitment that the Government would assist its resolution.

The Titford case contained a tragedy---two parties who were totally right. Mr Titford was right. He bought, as he thought, a full title to the property. As it turned out the Maori people making a claim had a valid claim based on an error made on that title. That surely was a matter for the Minister of Justice and the head of the Land Transfer Office to seek to resolve; and it was a matter that was resolvable.

Rt Hon. W F Birch: This man's hopeless.

Hon. WINSTON PETERS: But year in, year out, the Minister of Finance, from whatever indistinguishable electorate he might represent, says that it is hopeless. He would not know anything about these issues. He is a jumped-up acolyte of the far right, and the very worst handmaiden of the Business Roundtable. He will do anything for power. That is the assessment of his colleagues---that he is a back stabber par excellence. That is why he has left the House. He cannot take it.

Hon. Sir Robin Gray: I raise a point of order, Mr Speaker. It is the tradition of this House that no member makes reference to a member having left the House. The Minister is away on public business. The member probably knows that and I ask you to ask him to withdraw that comment.

Hon. WINSTON PETERS: I withdraw my comment about the Minister leaving the House. The point is that he interrupts, interjects, and has not got what it takes to stand here and debate the issue. The plain fact is that the Titford case, with respect, was resolvable, except for the grave grievance that built up, and the enormous unhappiness in one family. I saw farmers leaving adjacent properties in Dargaville, and, in my view, one man died prematurely because of



illness, occasioned by the stress to his family.

The plain fact is that if this Parliament cannot act in those circumstances, even for the most lowly, most modest, and most remotely situated citizen in this country, Parliament ceases to be relevant. That is what happened with the Titford case. Even today I understand that it is still not resolved.

We then come to the issue of Moutoa Gardens. At Moutoa there is still the outstanding dispute as to who might be the proper owner of that land. What this Government did, of course, was to start talking about police rights, it undermined the mayor, and made no effort at all to try to---

Hon. K T Wetere: Never even went up there.

Hon. WINSTON PETERS: No, these people are in positions of princes, but they do not treat these issues in a princely fashion. They suffer from total inertia, they leave it to the local city council, they leave it to the police, and then they start shouting about law and order. They allow a Minister of the Crown to make the most racist of statements, the most provocative of statements, on Radio Pacific, and think that is responsibility. I cannot think of any Prime Minister in this country's history who would have tolerated a Cabinet Minister behaving as the Minister of Tourism does on Radio Pacific every weekend.

Hon. D A M Graham: No, the member's the funny man.

Hon. WINSTON PETERS: The Minister for Justice laughs. This urbane liberal, this man of understanding, that is what he likes to cultivate at Remuera. He laughs and thinks it is a funny matter. Well, it is not funny. I am not the funny one. The funny one is the man whose mates are coming before a commission of inquiry and who are being exposed for the crooks they were even though they funded his personal campaign. That is not very funny, Minister of Justice. The Minister is meant to be upholding the law. He is not smiling now is he?

However, back at Moutoa, what was the Prime Minister's response on behalf of the National Party? It was for sharp law and order, to cry havoc, and let loose the dogs of racism. That was the response. It was never responsible and it did not ever have an eye towards the national interest. Pure unbridled venal power is its only purpose.

At Moutoa we saw a tragedy develop. I happen to believe that at Moutoa there was always a cause for dispute for a very simple reason. My mother was a young nurse who trained in Wanganui. She could recall the days when they used to go there on late Sunday afternoons to watch the rowing; that was where the Maori used to assemble. She called me late one night---she is 86 years of age these days---and said: ``Look, be careful, I think they may have a case.''' My mother is Scots, and she is hardly biased in this matter. But that is not so for this Government. Its members look around for the most venal political edge of politics and play it up and strum it up for all it is worth. They could not give a hoot about the truth. They could not give a hoot about the most important cause of politics---to do what is right in those circumstances.

They then went on to the occupation at Rotorua. In Rotorua they again were unable to take any sound action. The Attorney-General goes up there, and what does he do? As he leaves the marae he insults the whole lot of them. Both parties are offside now.

And then to Takahue. What happened there? The Minister in charge of Treaty of Waitangi Negotiations---that is what he calls himself---argued for this job, back in 1991. He said he was the man who could handle this great, white man's burden. He would be deified in history as the man who settled Maori grievances or ``the Maori problem''. He asked the Prime Minister for the job, said he was capable of doing it, but on 29 March he found out about Takahue, and

what has he done? He has done just nothing. He knows what former Labour Party and current Government stated policy is: those from whom the land came, if the land is taken or purchased for a purpose, and that purpose is no longer being fulfilled, must surely, as a first option, have the land offered back to them. But so naive, so lacking in comprehension, and so unqualified is he for this job that he claims that it is appropriate to put it in a Muriwhenua land bank. That is not the way Maoridom works. The plain fact is that the hapu families who were keeping that land warm, and have done so for centuries, were the people that this land should have been first passed back to, and the people who should have been dealt with first. It is part of their tino rangatiratanga. Ask any Maori member here whether that is right or wrong.

Sandra Lee: We'll see.

Hon. WINSTON PETERS: Does the member agree with that?

Sandra Lee: The principle is right.

Hon. WINSTON PETERS: The principle is right. The Minister of Justice, after all this time---in his fifth year at this job---still does not understand the most rudimentary elements of that, and as a consequence he does not move. With all the Government's resources and all the money it spends on public relations and everything else, it could not send someone up there to feel their way through the problem, to find out and to establish the protocol, and to give assurances that an investigation would take place and that we would await its outcome.

We do not excuse the abhorrent arson of this morning. It is a disgrace, it is an abomination to Maoridom, but I ask myself whether it could have been prevented and could we have not done better, way up there in the far north. My belief is yes, and I do not believe that one will find any rational, sane, reasonable member of this House who does not think likewise. But no, we have the Prime Minister launching forth with a statement---his first and only comment, I think, on this issue---which was something about asserting the law and asserting the order of this country. This comment in a newspaper is a replay. Back on 14 March, what was he saying about Moutoa? I quote: `` `The Maori protest at Wanganui's Moutoa Gardens is driving a wedge between Maori and Pakeha,' the Prime Minister warned. `I think what the responsible voice of Maoridom must be concerned about is that this is driving a wedge between what I would describe as sensible New Zealand and the desire of Maori leadership to resolve some of the outstanding issues.', he said. He said the protests were not helping Maori to resolve their grievances. `I think the loser is Maori, without doubt.' '', and then he went on, as he has a penchant to do, to talk about upholding the law.

Just the other day in all the papers, on the front page, he was asserting that the Government will stand by the law. How about living up to that commitment? How about finding out who it is should have the land divested back to them? How about doing something in the interests of, first, the community up there, which has enjoyed for over a century marvellous race relations? The place was destroyed by Government inertia, inaction, and, above all, its absolute arrogance. Frankly, the Minister of Justice is not qualified for this job. The Minister does not know enough, but worst of all, he thinks he knows. They say the greatest malady of the ignorant is to be ignorant without knowing it. He is the man who got up in the House one night with the Sealord's deal and cried tears, claimed to have the Holy Spirit on his side and that God was with him. Are they saying that about the Sealord's deal now, 2 years later? No, they are not. It is not a great issue now.

It is arrogant to think that one can go out and grab a handful of Maori and say: ``OK, we'll negotiate with you.' ' Just the other day

the Government wrote to the paramount chief of this country, Sir Hepi Te Heuheu, asking him to nominate four people to deal for all Maoridom. Is there any democracy in that? No. One universal thing came out of that hui at Turangi. It was that everybody there agreed they had first to go back to their own people. If anything positive came out of that hui, it was the affirmation that that is the way to do things. So why can this Government not get it right for a change? Why can it not actually understand that its policy stated in 1990 that on these matters it would negotiate iwi by iwi or tribe by tribe? That is the Government's stated 1990 policy, but it is not living up to it.

Within a tribe, when land is concerned, one cannot afford to impose an authority or a sovereignty by way of Government mandate on the tribe itself, one must look beyond that and see who the hapu, the sub-tribe, and the families are. It might take a bit of effort, but a great deal is at stake---the race relations of this country are at stake. Good race relations as we go into the 21st century are at stake. It might take a lot of time, and it might take a lot of sacrifice, and it might be frustrating, but it can be done. I commend those members of the House---and the member for Western Maori is one of them---who, on past occasions, have managed to negotiate their way through to harmonious settlements. But this is no way to act---to do nothing and turn it into a law and order issue.

Wait until Sunday! If people listen to Radio Pacific on Sunday they will hear the innate message this Government has got for this country on those matters. For if that is not the true intention, why is this man allowed to go loose, creating such havoc in the minds of so many people in this country who are plainly ignorant on this matter? It is not responsible. It is not right. No other Minister or Prime Minister would have allowed it to happen in the past, but this one does and they call him the great helmsman---the steady hand on the tiller!

``Cry havoc and unleash the dogs of racism.'' is the current policy of this National Party. If that were not true, why have we waited months for the Government to act in respect of Takahue? Why did we see the mayhem on television, night after night at Moutoa? Why have we seen nothing done, or something worse, at Tamaki Girls College?

Hon. D A M GRAHAM (Minister of Justice): One line in that rather bizarre speech, I thought, had some merit. That was the question whether it was possible that we could have avoided the incidents that occurred at Takahue this morning. I waited with some interest to see what the honourable member would suggest as to how that might have been done, but of course there were not any suggestions about that at all, and instead we just had another 10 minutes of personal abuse, and a lot of shouting and ranting and raving, and it is hardly surprising that his credibility in this House is as low as anybody's.

It is a serious matter, and I welcome the debate. For those who do not know, the situation is that the Takahue property was a school for many, many years from the end of the last century until 1977. Whether it was gifted by the local Maori people to the Crown for a school is not known. That idea has certainly not been suggested until the last few days, and I only read about it in the newspaper. We are trying to find that out. But it was certainly in the possession and ownership of the Crown as a school for many years. It became surplus as a school in 1977, and was then used by the Ministry of Defence until 1993. When that ministry no longer required it, it would normally have been disposed of as surplus Crown property, and, under Section 40, offered back by all means. But it would have certainly been disposed of.

It was at that time, because of the Muriwhenua claims before the

Waitangi Tribunal---which, I hasten to say, are not ready in many respects for negotiation---that the Muriwhenua claimants asked whether we would land-bank it. We looked at that, and we decided that it was appropriate to establish a land bank for Muriwhenua, the effect of which is to ensure that properties are not sold that ought not to be sold, and are held and made ready for return to Maori if the negotiations are successful. So a land bank was created and this property was placed in the land bank. As far as I am aware Muriwhenua were very pleased that that had happened.

How long the negotiations would take, of course, is a vexed matter. There is a very large number of representational issues in Muriwhenua. Some iwi have moved out from under the Muriwhenua umbrella and moved back in again. There are Landcorp farms where we have some problems about moving stock on and off. A large number of issues are still to be resolved, not the least of which is that in some areas I am not too certain what the claims against the Crown actually are. However, we are doing what we can to try to assist, and I have a facilitator in Muriwhenua territory at the present time trying to help them get their arguments in a cohesive form and their negotiating teams up so that we can make progress. That seems to me a constructive suggestion and we have done it.

But in the meantime the property sits in the land bank, and the question was asked about who uses it while it sits there. The answer was that the community ought to, so the local Maori people and the local non-Maori people of Takahue came to the Crown and said: ``While it's in the land bank, can we not form a community trust and use the facility as a community asset so that at least some benefit is being derived by the local community? We haven't got any money, so it will have to be a peppercorn rental of 10 cents a year or something, but that doesn't matter, at least we're getting some benefit out of it.''

It was agreed that that would be done, and all credit is due to the Hon. Matiu Rata whose suggestion it was. He went to some personal trouble to put that together, they formed the trust in June, and the intention was that the community could use the facility. But in the meantime, the occupiers, who had been part of those discussions and who had agreed with them, were in occupation. When they continued in occupation and we could not supply vacant possession to the community trust, the Hon. Matiu Rata asked the Crown whether he could be given time, with other people from Muriwhenua, to see whether they could move the occupiers off.

Perhaps it was a mistake to agree to give them time. Perhaps we should have said: ``No, Mat, we're not going to give you any time at all. We're going to put the police in.''

That did not seem to me to be terribly bright. So we gave the Hon. Matiu Rata time to see whether he could persuade them to leave peacefully. He tried, and so did the local community of Takahue. The longer the occupation went on the higher the tensions rose, because they would not move. Not many people were there, but they were there. Time passed and it became obvious last week, and, indeed, Mr Rata agreed, that his endeavours had been unsuccessful. So what was the Crown to do? Perhaps it did the wrong thing by issuing a trespass notice. Perhaps we should have just forgotten about it and left them there. We cannot do that. The owner of the property at the moment is unquestionably the Crown, and the Department of Survey and Land Information is its agent. Therefore the Department of Survey and Land Information was instructed to give a trespass notice. That department gave a trespass notice last Friday.

The response to that notice by the occupiers, of course, was a call for help from anybody who liked to go along and cause mischief. That is totally irresponsible, but that is what the occupiers did. Once the trespass notice expired the police were asked to assist.

When the police decide that a crime may well have been committed---and failing to comply with a trespass notice is such a crime, not the trespass itself; it is a civil wrong---then it is for the police to decide when and how they will enforce the criminal law. The Minister of Police has no power, nor has any other Minister, or anybody, any power to tell the police what to do. The police are totally independent. If members think about that for a moment they will realise why. If a Minister of Crown can say to the Commissioner of Police: ``Go and arrest that man, I insist.'', then we would have political mayhem and political involvement in the enforcement of the law and that is quite wrong.

The Commissioner of Police had to weigh up how he was to handle this. He had had the experience of Moutoa Gardens, which despite the length of the occupation at least ended peacefully. He decided that he would try to work to persuade the occupiers to move out. The police did that, but that failed and there was only one last resort. Obviously, the police planned their campaign as one would have expected and they moved this morning.

I understand that when the police moved on to the premises the occupiers thought that the time had come. They sent young people of 13 or 14 years of age with flaming torches around to set fire to tyres that had been placed throughout the property---I gather there were some 200---with accelerants on top, including tyres placed under the school building. These totally misguided and misled young fellows were asked to go and do the dirty work for the occupiers, and they went around setting all these places on fire.

We could be critical of the police if we could find anything to be critical about. I do not know what else they might have done. The police thought that the occupation was illegal, which it was. They were expecting some trouble, and that was proved. We never quite know what the occupiers will do in these circumstances. Some of them are violent, some of them have violent backgrounds, and it would not have been appropriate for the police to do other than control the situation themselves and make it properly secure. So the fire started and the fire-engine finally arrived, and disaster followed.

Who suffers? We all suffer. The community up there certainly suffers, because it has lost a historic building. What was available for the use of that community has now gone. It has split the community between the occupiers plus Kenny Mair and a few others, the rest of the Maori community, and the rest of the non-Maori community that was living in harmony. That is a great problem and a great shame, and no credit to the occupiers whatever.

But not only has the local community suffered, so has the rest of New Zealand suffered. I am not going to stand here and say that the Government has all the answers to these problems. But I like to think that we are making a genuine attempt. I do not expect everybody to agree with it. I like to think that the \$400-odd million that we have returned to Maori in assets over the last 3 or 4 years is a step in the right direction. I rather suspect that the honourable member for Western Maori might agree.

So we are making progress, but there are some 500 claims. Some of those people are waiting patiently---90 percent of people are waiting quite patiently---but the other 10 percent are taking the law into their hands, trying to jump the queue, put pressure on the Crown, occupy premises, and say: ``Look, we used to own this, we would like to have it back. We know it's in the title of the Crown at the moment, but at one stage it was ours, I think, and if it isn't we'd like it anyway, therefore we are going to stay here and try to put political pressure on the Government. If we get into trouble we'll get Kenny Mair, Syd Jackson, and some of these people to come up and lend a hand. If we're really pushed, well, we'll start laying about

setting it on fire.''

If that is how these people are going to act, then the chances of New Zealand tolerating such behaviour is zilch, including me. I would have hoped and thought that I have as much sympathy for the claimants in these claims as anybody on this side of the House. I have certainly devoted a great deal of my time over the last 4 or 5 years to try to bring some conciliation and healing between Maori, who have had these grievances for so long, and the rest of New Zealand. It has been a daunting task.

Whether I am the man for job, I would not know. That is for others to say. All I can say is that I have done what I can. But I will not be diverted from carrying on trying to achieve the settlement of grievance claims. Not Kenny Mair, not Syd Jackson, nor the Harawiras will suddenly force the Government to say: ``Look, politically it has now become such an embarrassment that we'll all go and do something else and forget about it'', and then they carry the day. That will not happen. So long as I am responsible in this area we will continue---and I have the support of Cabinet and the Prime Minister---to try to quietly resolve these matters calmly and reasonably as best we can.

Bear in mind that some 500 claims are before the tribunal. A lot of them are still outstanding. Many of them are the same claim, but there are a whole lot of cross-claims over the same land. So it is not quite as daunting as it sounds. The claims are not all enormous. What are we doing to try to speed up the process? We increased the funding to the tribunal 2 years ago when everybody else's vote was being cut and we have maintained that, notwithstanding. We have a review taking place now of the structures of the tribunal and whether further resources are needed. I have increased the number of staff in the Office of Treaty Settlements. We have had numerous---and I say that advisedly---Cabinet papers on structures and procedures on how we can better do it. We created the protection mechanisms that did not exist before, to try to identify properties that ought not to be sold. We have a large number of properties in the Ngai Tahu land bank, in the Whanganui, in the Whakatohea, and in the Muriwhenua land banks. The other day we decided we would not sell any of the land that was surplus to Crown requirements in the raupatu areas. None!

So we have taken all of these steps to try to put ourselves in a position. We then went to the Maori people, and to non-Maori because, funnily enough, they are involved and interested, and said: ``Here are some proposals as to how we might approach the settlement of these claims. What do you think?'' One of those proposals is apposite to Takahue. One of the proposals was that if Maori people, or non-Maori for that matter, gave land to the Government and said that the land was for a school and we built a school, then we do not need it any more, what happens to the land? We should give the wretched thing back. We put that in our proposals and we put it out there. This was another chapter roundly condemned and thrown out by Maori. Anyway, be that as it may, that is obviously sensible and we will do that.

However, how do we go back to all of these claims, particularly when we do not know who the true claimant is? Some of the claims are quite fanciful and have no merit whatever. It takes a lot of research and vast experience. We have small claims that we can try to deal with without incurring all that expense to reach a solution. We are doing that now. Some of the larger claims, of course, are much more complex.

The actions by the protesters and occupiers up at Takahue this morning are totally unacceptable to all New Zealanders and are an affront to our way of life. They will not succeed in forcing the Government to abandon its attempts to try to resolve grievances. All

they are doing is penalising their own people, because if this land is returned after the negotiations, it will be returned with a charred wreck of a building. If they think that somehow or other that is in their interests, well I fail to see it. If they fondly imagine that the Government will give up, because some of them are anarchists, then they are wrong. I fondly believe, and I believe implicitly, that most New Zealanders are fair-minded. They know jolly well that some of these matters need to be resolved and they will support sensible approaches. But they will not be pushed around. They expect people to act responsibly in this country. If they want to watch television to see what happens in other countries, then we do not want that here. It is a time for calm, it is a time to look seriously at what is happening, and to allow the law to take its course.

Jill Pettis: How much longer?

Hon. D A M GRAHAM: Well all I can say is by the time I took this over in 1991, we had not made much progress at all. We have done more in the last 3 or 4 years than has been done in the previous 150 years. Some people think we have gone too far. The member for Tauranga says we have not done anything---inertia, and all that sort of thing---but nobody takes much notice of him. It is important that New Zealanders realise we are going through a period of tension, and tolerance and calm will be required.

Hon. K T WETERE (Western Maori): In the last few minutes of the Minister's speech he made the assertion in this House that one of the difficulties he had as Minister, and the Government had, was trying to find out who the true claimants are. I suggest to him that the proposals he put to this House and to this country pertaining to the fiscal envelope have within them a question in relation to mandating people for that particular purpose. When is the Minister going to arrive at a decision that will give him a formula and a process to allow him to determine who those claimants are, which he says he is not able to do? In my view that will help to point him in the right direction and towards people with whom he can talk in order to overcome some of the problems that he is facing at the present time.

I am well aware of the things he has done thus far, and I commend him absolutely for that. But I guess that that frustration will still be out there among our people unless he finds a process.

Hon. D A M Graham: They could have assisted by looking at the submissions with us.

Hon. K T WETERE: Well, I understand that at the end of the day that will not have to be done. In any case, unless we are going to resolve the fisheries---Sealord's---deal in providing a provision for allocation, the same matter will arise. So at least there are two hopes that we might find a solution to the matters that the Minister is trying to resolve. I suggest to the Minister that those are available to him, and I am sure they will come at some point in time.

I remind the Minister that of course we tried to help that situation in 1990. Unfortunately, the Government of the day saw reasons for getting rid of that piece of legislation---the Runanga Iwi Act of 1990---but, had it not been repealed it might have helped the Minister tremendously. I am sure he now agrees that it ought not to have been repealed, as it was by the Runanga Iwi Act Repeal Act. It would have helped the Minister to overcome those very vexed problems that he now faces. In my view that is at the root of the problem and at the root of his inability to be able to make those claims go where they should be going---namely, to the right people.

I say also that every Minister, from the Prime Minister down, has Maori advice on hand. The Prime Minister's adviser was at the meeting at Turangi in the weekend. She will have heard what went on there and what those resolutions were all about. I can table a copy of the

Prime Minister's letter to Sir Hēpi Te Heuheu, for the information of the House.

Hon. D A M Graham: It has been tabled.

Hon. K T WETERE: I thank the Minister. It is available to the public, but I simply want to say that that hui overlooked the letter. I guess the Minister is going to have to make some progress with the 450-odd submissions or whatever he has in front of him---

Hon. D A M Graham: There are 1,500 submissions.

Hon. K T WETERE: ---all right, the 1,500 submissions, in order to arrive at an answer to the earlier question I raised with him. There is no doubt in my mind that until he establishes that process, none of this or of what he is trying to do at the present time will evolve into the decisions that he and, I am sure, the House would like to reach.

The House has been embroiled in matters of this kind in the last decade. While I welcome the debate, to heighten the awareness of things Maori and Maori development generally, I believe that this country cannot tolerate the disobedience indicated by the activities of some of our people throughout this nation. In my view there are provisions and measures that can be taken by Ministers to offset those matters that beset us.

For example, the Minister referred to the Department of Survey and Land Information. I am well aware of that office and its responsibilities, and the advice that it could give to its Minister. I am also well aware that other Ministers have access to information that can be made available to the House and to those people generally.

Let us have a look at this question. The question is whether the land was gifted by the descendants of Takahue to the Crown for the purposes of education. Normally what has happened is that if there has been no further requirement for the land that was gifted, then under the Public Works Act the land has first been offered back to the descendants of the original beneficiaries. If in fact the land has been transferred to another agency for the same purpose, that has generally been agreed to. In this case we have a classic example where the purpose of the land was transferred from education to defence. In our view, that was not the reason that the gift was made in the first place.

Herein lies the difficulty. There are number of cases where the Crown has moved to sell the parcels of land once they have gone out of that sort of system. I understand that a number of issues will arise. Here we have a situation in which the gift was made and then transferred to another purpose, and it has now been put into a land bank in the name of Muriwhenua. I understand that that claim has been before the Minister for the last 5 years. I understand they are trying to make some progress with it, and they have now put in a negotiator to try to help them speed up negotiations between the Muriwhenua claimants and others. In the meantime, because of the frustration which our people have faced because of the indecision of the Minister and the Crown generally, these things will arise.

We have seen a number of cases in the Tai Tokerau. Even in Waikato, right next door to the Huntly power-station, we had one of our hapu sitting there. Moutoa Gardens in Wanganui was a case in point, where as members of Parliament we tried, like everywhere else, to become involved, to try to advise our people, and to try to help them to see that the provisions were there to help them, and to ensure that they had a voice directly to the Crown. What happened in the case of Wanganui? Many members of Parliament went there. They brought a report to the Prime Minister suggesting a method that he might use first of all to get his own Ministers up there---but not the Minister of Social Welfare, who was simply there politicking and



hoping that he might become the next member of Parliament.

Jill Pettis: He never even went.

Hon. K T WETERE: I understand he was there on the outskirts talking to the mayor but not necessarily to the proponents of Moutoa.

At the end of the day, our people there left in an amicable way and, I believe, in the best traditions of Maori custom. There was no way that Nick Tangaroa and any of those other people were going to allow the police to put their hands upon them. But they made the point as to what that was all about. The member for Tauranga is quite correct when he talks about the land that was formerly under the harbour board but is now under the district council, and which is all part of the Moutoa case.

That matter will not go away; it will be back again. As I understand it, and as I have said before in this House, there is a case before the tribunal that does not specifically relate to that matter. But it will be back again. I suggest to the Minister that if he does not make some progress in trying to find a process by which he can deal with the claimants, then he is not going to succeed. In those cases where he has made some advance, that matter has been very clear in relation to the people who are in that position.

Ian Revell: The claimants decide who the owner is, first.

Hon. K T WETERE: That is one of the difficulties. The Minister himself said that he did not know who were the right claimants. This is the case only because a process does not exist for him to deal with those particular people who were responsible. I guess he will have to find a solution of that kind sooner or later if he is to progress any of these matters.

There are a number of cases before the tribunal. I would have to say that, while he might pour more resources into this matter, he might be selective about how he goes about it. I believe that it would help immeasurably if he were to look at some of those cases right now and to start to make some decisions. As I said before, I guess that one of his difficulties is in determining, without the decision being delayed by some other people on the side, who the correct claimants are. We have here a classic case where there is that difficulty.

Let me come back to the matter that I started out with very early in the piece. As I understand it, the Minister has advisers sitting alongside him who can give him the advice that is required, be it advice on whakapapa or the right claimants.

Hon. DENIS MARSHALL (Minister of Conservation): I thank the member for Western Maori for a constructive input into this debate over a very difficult issue. Certainly his approach is far more sensible, rational, and constructive than that of the member for Tauranga, who believes that the Government is doing nothing in this area. The Government has taken considerable initiatives and has had a degree of outstanding success in certain areas, particularly with Tainui and the fisheries claim. Those are areas in which the Government has taken initiatives and has had a degree of success in settling some of these claims.

But initiatives, of course, put pressure on the claimants themselves and put pressure on Maoridom. What we have coming before us in many circumstances are examples of what I believe are significant disagreements within Maoridom as to who the claimants ought to be. I listened with interest to the comments made by the member for Western Maori about the need for the appropriate resources to go in to deciding just who those claimants ought to be. In the example of Takahue, the Government has had considerable advice about who the appropriate claimants ought to be.

If we look at the transcripts of the statements made by people from Muriwhenua and people like Mat Rata, when we see what he says,

we have a fair idea of what his attitude is to what appears to be blatant intervention by people who are non-claimants. When Mat Rata spoke on the radio this morning, he suggested that this incident at Takahue was more of a political expression, rather than a legitimate claim to the area. He suggested that there were people who clearly had a different view asking people to come in from outside---people like Ken Mair and Hone Harawira were asked by those with a different view. Yet that was preventing somebody else from getting something that they could not have and he suggested that was unadulterated anarchy. Anarchy must not be permitted and must never be repeated, given the value of the whole Muriwhenua claim.

Looking back through the correspondence on this issue, it is clear that a lot of negotiation with Muriwhenua went on before this unfortunate situation occurred. One piece of advice to the Minister in charge of Treaty of Waitangi Negotiations was this: ``We draw your attention to the fact that the Takahue property lies within the Te Rarawa rohe and Te Rarawa has recently indicated to the Crown facilitator that it has the mandate to deal with Te Rarawa claims to the exclusion of any other organisation. We have, however, checked with their representatives and they, too, support the eviction of the occupiers.'' It seems that there was general agreement between those people who had a legitimate claim within Muriwhenua that these occupiers should be evicted. Indeed, that is what happened.

As a result of that, we had the totally unacceptable incident that occurred today. We have a justice system in this country whereby people very often come to my office in my electorate and say that they do not believe they got a fair deal as a result of a decision of a court, an arbitrator, a tribunal, or whatever. Those people must never take the law into their own hands when they believe they have been treated unfairly. Justice is always a matter of debate between those who unfortunately get caught up in the process. There is no excuse whatsoever for these people and others to take the law into their own hands when they are involved in the democratic process.

I believe, in my area of responsibility as Minister of Survey and Land Information, which administers many of these properties, that everything was done to follow the necessary procedures and processes, with the support of the local Maori people in this case. Everything was done that was proper, rational, and reasonable. When I spoke to a Maori friend of mine this morning, whose advice I respect, he said: ``This really smacks of disagreement within Maoridom more than anything else. Clearly there is something deep-seated under the surface that is not known to the rest of the community that has triggered this particular disagreement.'' If that is the case, I am not sure that any Crown facilitator could find a resolution to that particular issue.

I think in many cases we have to look to Maoridom itself to provide us with advice on who those claimants really are in certain situations. Here we have had that advice. The advice from Maoridom and from Muriwhenua was that these people should be evicted. Indeed, we acted upon that particular advice. Let us just look back for a moment. While we do have a small number of people who are attempting to hijack the democratic process and who are attempting to take the law into their own hands, many others are involved in very constructive dialogue with the Crown, and I refer to the major settlements. In my other role, as the Minister of Conservation, I have been involved in some very constructive settlements with Maoridom over claims and some of the aspirations they have for lands that they believe are rightfully theirs. I refer to Takaporewa---Stephens Island---I refer to management of their own forests, or rather, Crown-owned forests, by Ngati Hine, which was universally accepted and was agreed upon by the local people.

There is a lot of debate about Moutoa and what happened in that area. I have met with the local people in the middle - Whanganui River area and the Pipiriki area, and have tried to get a better understanding of what the individual aspirations are of some of the people who live in that area for the Whanganui River and the forests that are in the national park that surround that. Incidentally, it is interesting to note that the national park was established in the not too distant past by a Labour Government, which apparently did not have a feeling for precisely what the aspirations of the local Maori were at the time.

We have built up a relationship over a period of many negotiations with the political groups in the middle and upper Whanganui River but it is slow work and it takes a long time. I have to say it is extremely disheartening to see a lot of that work undone by small groups of protesters who do not want to listen, who do not want to talk, and who do not want to negotiate over some of the very constructive issues that we have been dealing with up there. The 1080 poison is a case in point, when the Department of Conservation spent a great deal of time talking through the issues with local kaumatua and getting their support. Then all of a sudden we find that a small group does not want to listen to anyone, camps outside the department's offices in Wanganui, makes threats to local staff members, and generally ignores protocols within Maoridom as much as abusing the good work that has been done in the past.

As far as Takahue is concerned, threats have been made by some of those protesters against staff members of various Government agencies. That will not stop the Government from dealing with the claims that are before it. We will continue to negotiate with Maoridom in a sensible and constructive way. What it will do though is destroy the credibility of those people, not only in the eyes of their own peers but I think it will also destroy their credibility in the eyes of all New Zealanders. I think that is very sad in terms of the good work that has been done in negotiations and in the achievements that we have made over the last 4 or 5 years. It is true that we have made more progress than anyone else.

Hon. DAVID CAYGILL (Deputy Leader of the Opposition): The destruction of the property at Takahue is not acceptable. It is clearly a breach of the law. It has alarmed the community, locally I am sure and I have no doubt nationally. It threatens the relationship between the races in this country, and that is not something that the rest of us can stand by and accept, and it runs the risk of undermining support for the treaty, and that is not acceptable either. I wonder whether those who set fire to the school at Takahue wanted any of those outcomes. Superficially that would seem an extraordinary thing. We hope that the situation is not one of such cynicism that, short term, people have decided to do deliberately that which would tend to fly in the face of their ostensible long-term objectives.

The only important question really for this House is what is to be done now---the question we usually have to come back to---and I want to spend most of my time on it today. I am pleased that the Minister in charge of Treaty of Waitangi Negotiations has said, as I expected that he would, that this kind of protest action will not deter the Government from its determination to address treaty issues. But I would be more impressed by that assurance if I thought that these events, or other things that have happened in recent times---and I think in particular of the report that has come out just in the last few days from the Controller and Auditor-General that calls into question some of the Government's approach in respect of treaty matters and one or two other matters that I will come to in a moment,

and various pieces of advice the Government has had---had caused the Government to think again about its overall approach. Then we might be able to take more heart and set that encouragement off against the sense of despair and frustration that understandably arises at the sight of a school being burnt. Regrettably I do not have that sense of encouragement.

The fact is, and the report of the Controller and Auditor-General that I referred to a moment ago, very diplomatically but plainly enough, states: ``The Government's treaty programme is in a muddle. It's not that it's getting nowhere but it is certainly not well organised and set out clearly in a way that everyone can comprehend.'' One matter, of course, that the Controller and Auditor-General does not refer to, but the largest single piece of evidence that suggests that something is wrong, is the overwhelming rejection yet again from the hui at Turangi of the Government's overall approach to treaty matters. The fiscal envelope has been roundly and totally condemned---absolutely rejected by Maoridom. But the Government proceeds sublimely indifferent to that reaction, almost proud of it, totally expecting it and therefore absolutely unprepared to think again. I deplore that. I regret it---

Ian Revell: What would Labour do?

Hon. DAVID CAYGILL: We said at the outset what we would do. There is no need to impose an arbitrary and artificial envelope---

Ian Revell: No budget?

Hon. DAVID CAYGILL: The only budget that matters is the annual Budget, and it is entirely reasonable to have a budget that is responsible, bearing in mind the other demands, and to put that before Maoridom. Maori understand that. For many claimants the issue is the Crown's recognition of their claim, not the speed with which that claim can be recompensed. That does not mean we can go on saying to Maoridom: ``You must wait, you must wait, you must wait.'' The issue is frequently one of principle. The Tainui settlement, to take an example where some progress has been made, is a good example of that. What matters, above all, is not the money but the apology. Very often it is not money, much less the speed of payment, that is at the core. There never was a need to impose an arbitrary fiscal envelope, and I am not surprised at the continued rejection of that. I am disappointed in the Government's refusal to think again.

I had hoped that this debate might provide the Minister in charge of Treaty of Waitangi Negotiations with a timely opportunity to indicate how the Government intends to respond to the report of the Controller and Auditor-General. It is a very clear, very moderate, and very reasonable warning. It states: ``This programme is a muddle. It is hard to tell how much money is available where. It is hard to tell which information is available where.'' and ``There is no formally established officials committee to assist in the transfer of information and development of integrated policy advice. The protection mechanism, whereby land is held in a land bank, is a muddle. Of the properties which have entered the protection mechanism'---and it takes about 4 months to look at any of them---``only 4 percent have been protected, half of them in the end end up being disposed of by the Government.''

The summary of the report of the Controller and Auditor-General states: ``I have observed no integrated system for the provision of information.'' He also observes that the Minister of Maori Affairs is in breach of his obligation under the law to report annually to Parliament on the response of the Crown to the recommendations of the Waitangi Tribunal. He has not done that. He has not had the courtesy to come back to this House since November 1993. If a Minister is in breach of the law, albeit on something that is procedural and mechanical---no lives are at stake, no property is at issue, but the

claims of thousands of people are at issue---and if the Minister does not see fit to comply with the law, he does not have the standing, I think, to require that others should.

But the most damning piece of advice that this Government has had that all is not well in this area came earlier this year from no less than the chairman of the Waitangi Tribunal. I want to quote yet again---I have had occasion to do so earlier this year---from the memorandum that the chairman delivered on 17 March this year. The Chief Judge of the tribunal had this to say: ``The main constraint on the tribunal has been its budgetary limitations. It is undoubtedly the case that much more research and many more hearings of cases would now be in progress or would long since have been reported but for this limitation. The tribunal has a staff of 30, far fewer than the Government itself has available in this area. There are 16 members of the tribunal, but for financial reasons only one is able to work full-time; all others have other commitments. The more unfortunate effect of budgetary limitations is the rivalry this has helped engender amongst iwi and claimant groups.''

Many members of this House know that to be the case, and in one sense we have seen that at Takahue. The chairman says: ``The tribunal is continually beset by requests for early and urgent funding and there has been criticism when the tribunal has proceeded with other cases. The situation'---and here is the point that relates directly to Takahue---``may also have contributed to some improper occupations of land.' The Chief Judge is not excusing that; the Chief Judge is not saying: ``That's all right. Because the Government hasn't funded enough, and we can't do the research we would like, it's all right for people to occupy land.'---much less destroy property. But the Chief Judge is saying that the responsibility for the backlog of research and claims is not the tribunal's. It is squarely the Government's responsibility.

Later in the same memorandum the Chief Judge said: ``The claims of most iwi remain in incomplete stages of research or hearing on the main grievances, let alone their numerous ancillary claims.' That is true, we all know it is true, and we all know it is not good enough. Something over 500 claims are awaiting a hearing from the Waitangi Tribunal. Many of those overlap. Some may be, if not frivolous, at least lacking in substance, but many are not. Even if they are grouped, something like 30 separate substantial claims are awaiting research and hearing. That is not good enough. It is a situation that builds frustration.

In this case this particular piece of land was part of the Muriwhenua claim. That claim was lodged with the Waitangi Tribunal on 1 December 1987. Its registry number is Y45. It is one of the earliest claims lodged with the Waitangi Tribunal. The fisheries aspect of the Muriwhenua claim has been dealt with, heard, reported on, and subsumed in the Sealord's settlement. Their land claim has not been dealt with. They have sought to negotiate that directly with the Government for over 5 years and they are still talking. Of course there are difficulties---difficulties in establishing who is entitled to claim, difficulties in establishing the precise history of the various lands. But this Government has not assisted itself, the claimants, or this country by impoverishing the tribunal by deliberately not giving it the resources that it has sought and, plainly, that it needs. This Government bears some responsibility for what has happened at Takahue.

Hon. JOHN LUXTON (Minister of Maori Affairs): That speech was a bit rich, coming from a senior member and former Finance Minister in the last Labour Government. We have to go back a little bit to see where many of those issues actually arose. The Labour Government changed---I think it was in 1985---the date from when treaty

breaches, or claims relating to grievances by Maori groups, could be heard, but it did not actually revamp the Waitangi Tribunal at the time. Now it is a bit rich for the Deputy Leader of the Opposition to come into this House---after the present Government has been here 5 years, and has done more to resolve those issues than any previous Government---and to suggest we are not doing enough.

Well, we are doing a damned sight more than the Labour Government ever did in this area. The Labour Government increased the Crown's exposure, without giving any additional resources to the tribunal. What it did not do was to set out guidelines on how it would treat each claim.

Now this Government has been full steam ahead since 1990, setting down a whole series of criteria on how it would negotiate, settlement by settlement, and how the Waitangi Tribunal's recommendations would be responded to, so there would be consistency in the response of the Government to treaty claims, no matter when they originated.

A huge amount of work has gone into that position. Those position papers were then taken out to Maori in the form of a consultation round, prior to Christmas last year. Well, a few hotheads set the thing off and said: ``No, no, we don't actually want to see a quick resolution of these things. Let's scuttle this process.''  
Unfortunately, too many people listened to them.

OK, we will continue the process. We have received submissions, and again we have gone back to Maori and said: ``How about having an input in helping us to get this right?'. Again they have said: ``We are not interested.', because a few people keep steering it away. In some cases they do not really want to resolve those issues. We have put a lot of research into it. Other groups have put a lot of research into it.

If Maori do not want to follow that formal channel, the door of the Minister in charge of Treaty of Waitangi Negotiations is wide open. Any group that can prove its case can walk in there tomorrow. I am sure the Minister would be only too prepared to negotiate and to finalise that particular claim, within the framework that the Government has already set. That has already happened with probably the largest of the claimants out there, the Tainui people. There is no reason that could not happen to any of the other 500 claims, provided the claimants can assure the Government that they have a mandate to be there, that they represent whom they say they do, and that the beneficiaries will actually benefit at the end of the day, because that is what we are asking in the consultation process.

So, as I say, it was a little bit rich for the Deputy Leader of the Opposition to try to blame this Government rather than picking up some of the responsibility, as part of the previous Government, for creating part of the process and not following through on how the huge explosion of claims from Maori people that were then forthcoming would be handled. Many of those grievances are thoroughly legitimate.

There is no doubt that many of the recent occupations are improper. They are based on two things: first, a lack of real knowledge and research, and, second, political activism. There is a large element of political activism from the far left in many of those cases. Rather than use the normal processes of the law, and the formal channels that have already been set up to try to resolve these issues, some people will always be wanting confrontation for political reasons, rather than trying to expedite a settlement.

It is a little bit like the unemployed workers group, which is out there with its own form of radicalism, trying to upset the Government and trying to create an element of fear in the community by total disruption and, in some ways, anarchy. It is exactly the same with a small group of Maori who, I believe, quite frankly, are rather misguided in those attempts. We cannot let such extremist views

prevail. There are already processes to resolve those issues, and I agree with the member for Western Maori, who said exactly that.

In relation to the Takahue situation, it was interesting to hear the comments made by the member for Tauranga, who requested this debate. I thought he might have come up with some suggestions as to how he would resolve the issue, but, no, he went through a whole process of telling us about former occupations, and he somehow or other suggested that it was the Government's fault. He comes from a party that seems to have a great conspiracy theory. It is interesting to note that even this morning his colleague was on the radio suggesting that there was a conspiracy. He said: ``What I believe that this is really, and call me a conspiracy advocate, but I believe this is a ploy basically to set Maori against Maori and also Maori against European, and that at the end of the day we are leading into an issue that can be thrown out to the people for a general election.''

That comment was made by the deputy leader of New Zealand First, who is an MP for the area where this incident occurred, and that is his contribution. He suggests that it is a conspiracy that was somehow or other jacked up by the Government. What a lot of nonsense! He does not understand even his own constituents, when he comes out with conspiracy theories, but then that is the ploy that has been used by his leader time and time again. There is always a grand conspiracy.

It is a little bit like the wine-box thing. The wine box is another classic example. The previous Labour Government deregulated the financial markets, but it did not change the tax law until 1988. People found they could move money off shore, bring it back, and avoid paying tax. It is as simple as that. It is obvious. We do not need a commission of inquiry to inquire into that. That is just common sense. But oh no, here we go! The member for Tauranga says that it is a conspiracy, and that all are against them. Well they certainly are against New Zealand First, because that party does not know who to pander to. It does not know whether to pander to the whingers in Grey Power, or whether to pander to the Maori radicals.

Mr DEPUTY SPEAKER: The member is getting very wide of the mark in this debate. It is a debate dealing with the Takahue School, and the member should come back to that.

Hon. JOHN LUXTON: I was getting a little carried away, in my enthusiasm, but I will go back to the occupation of Takahue School. It is interesting to note that the school was vacated by the Ministry of Education in 1977, and that the Government at the time, being a good Government, decided that it was spare property that could be used by someone else. The Ministry of Defence, rather than purchase new property, used it until quite recently. The school was declared surplus in 1993 and was transferred to the land bank, basically for the settlement of Maori claims. Now a group has gone on to the site in the belief that it has the right to take it over.

A community trust was set up as part of the settlement process, with the authority and the support of the local Muriwhenua Maori group. As a result, that group was to take over this building and use it for community purposes.

Now we have the situation where a group of people have used accelerant. They have burnt the building down. One minute they call it a marae, and the next minute they burn it down! Where is the kawa, where is the tikanga of the people involved there, when they say: ``This is Maori property. This is a marae.'', and then the next minute they burn it down? Quite frankly, those people do not deserve respect, neither do they deserve the coverage of the media.

Basically, much of this is media-driven---again, politically---to try to generate a concern amongst the community that these are big

issues. These problems are small issues being caused, basically, by small minds. The full force of the law will come down on those people who break the law. If they offend, then they can expect to be punished properly by the law---and they will be, regardless of the good footage that might have been encouraged by the television crew, which just happened to drop by at Takahue this morning when the police were there. If anyone had tried to get the television crew there 3 days ago, when the local hall burnt down, they would not have been interested. But when they are told in advance that a good story is coming up---as with all protest movements---then that is exactly what they will be there for.

That is the problem that we have with the situation at present. We are not getting the balance to show that this Government has done more to resolve those longstanding issues of real grievance on the part of the Maori people than any previous Government in the history of this country.

SANDRA LEE (Auckland Central): The Alliance opposes the burning down of the Takahue School. We cannot---

Hon. John Luxton: Half of her members were supporting it.

SANDRA LEE: I raise a point of order, Mr Speaker. I take offence at the statement that was just made by the Minister of Maori Affairs. Those sorts of statements are entirely unhelpful to this situation and, in fact, aggravate it.

Mr DEPUTY SPEAKER: Just because a member has taken exception to an interjection does not mean in itself that the interjection was out of order. He was making a debatable point.

SANDRA LEE: The Alliance opposes the burning down of the Takahue School. I personally cannot follow the logic that advances the argument that a struggle can be won by destroying that which one is fighting for. The late Martin Luther King, in a letter written from Birmingham Jail in the 1960s during the civil rights actions, said that civil disobedience does not create tension; it simply reveals the tension that is already there. But he also made the point that violent and destructive civil disobedience is entirely inappropriate in advancing one's struggle for fairness, justice, and equity. I think that needs to be remembered by those who would like to become leaders in terms of the issues affecting my people.

When the Minister of Justice names people such as the Harawiras for having incited the situation, as he did in his speech in the House today, he would do well to remember that he must add to that list people like the Minister for Tourism, the ``Hones on the phonees'', and, at times, the Prime Minister himself. It takes two to tango, and unfortunately the provocation has not been just one-sided.

The Minister of Maori Affairs says that this is a media issue, and indeed it is. It is one that has been whipped up, aggravated, and exacerbated in the media, in particular by Ministers of his Government. So they need to do a bit of soul-searching on that matter, because this school has now been lost as a resource to all the community.

Takahue School was indeed a taonga and a marae. In Pakeha terms, it was classified under the Historic Places Trust as a building of historical significance under section 35. Some members of the local community, Maori included, have told me today that they will sorely miss that building, which can never be replaced because of that historical significance.

I say to the Minister of Maori Affairs, who has just spoken, that in my time in this House I have never seen him, as Minister of that portfolio, bring to this House any proactive, progressive policies or initiatives on his part that could address many of the burning issues facing Maori today---and he ought to.

Te Puni Kokiri is another example of a department that will have



to do some soul-searching at the highest levels if the issues that are important and vital for Maori, which have been left off the agenda for too long, are to be addressed. For example, officials from Te Puni Kokiri are constantly telling the Maori Affairs Committee of the difficulties their department has in fulfilling its monitoring function. We are told that this difficulty is because of the unwillingness of other departments, and Ministers, to ensure that the necessary information and statistics are provided to Te Puni Kokiri, to ensure that this monitoring happens.

That perplexes me, given that the proportion of the department's budget that is dedicated to monitoring is minuscule---I think it was 18 percent last year, and only 19 percent is being proposed this year. So I am a little bit unconvinced this year by the argument that the department's inability to monitor the impacts on Maori of Government policies is just because of the lack of statistics held by other departments.

As far as Labour is concerned, that party has the ``MMMM'' policy---Maori management of matters Maori, I believe the saying goes. Given the fact that it has the three most senior Maori MPs in this House, who are well respected, why is it that its spokesperson on treaty issues is a Pakeha, from a place with probably one of the smallest of Maori communities? So Labour members will be tested when the Te Runanga O Ngai Tahu Bill comes back into the House. That will be when their colours are tested, given the fact that the overwhelming majority of Ngai Tahu have stated very clearly before the select committee that they---and Human Rights Commissioners, and all sorts of people who are well respected in society---oppose this legislation and consider it outrageous. Given that, and the fact that its proponent was jeered off the stage at Turangi during the weekend, I think that Labour members, too, will have to do a bit of soul-searching.

Mr DEPUTY SPEAKER: I say to the honourable member, as I said to the previous member, that this is a moderately narrow debate, and I think she has moved quite a way from the matter of the Takehue School.

SANDRA LEE: It is common knowledge that the Waitangi Tribunal has been grossly underresourced over recent years. We as Maori are beginning to wonder whether it is a policy of this Government actually to see the Waitangi Tribunal itself undermined.

The most important function carried out by the Waitangi Tribunal, in terms of treaty settlements, is not just allowing the iwi and the hapu that have held these grievances for so long to air them at last; it is also playing a vital, educative role out there in New Zealand society, amongst the communities. Yet this Government is denying the much-needed resources the tribunal requires to carry out its work. Neither am I convinced by the comments made by the Minister of Justice that the tribunal has received from this Government adequate resources, or increased resources at a time when the Government was slashing back elsewhere in order to carry out its work.

The Waitangi Tribunal has not received adequate resources. The Muriwhenua claim is an example of that. It was 1987 when that claim went in. It is one of the oldest claims, and the people have been waiting, and waiting, and waiting. They are asking now whether the Minister will give serious consideration to a flexible and progressive settlement of claims, not just for the Muriwhenua but for all over the motu, because that is what is required.

If only the Government had the grace and goodwill to say to the iwi in New Zealand who are carrying forward claims to the tribunal: ``Listen, we are prepared to hear your take; we are prepared to hear those grievances.'''---and with the grievances comes all the grief of 150 years---``We will listen to the merits of your case, and we will

ensure that well-resourced tribunals research the evidence and the claims you are making. We will make sure that those who purport to have a mandate actually do have a mandate. We will commit to ensuring that we will not bring down legislation that undermines the traditional social structures of Maori, such as hapu.'

The concerns raised by the member for Tauranga are quite correct, and are not just unique to the north, or to anywhere else. Throughout Maoridom now---and I am sure the tribunal itself would say this---from Ngai Tahu to the far north, Maori are concerned that traditional social structures are being legislated out by this Government. The hapu, the traditional resource-owning units of any iwi, are being shafted through current legislation, or, at least, legislation the Government would like to get through. That issue will have to be addressed democratically and fairly.

The former member for Northern Maori, the Hon. Matiu Rata, has said again and again to this Government, and publicly, that whether or not the Government likes it, we have to face the fact that we must deal with democratic processes and countenance them for Maori, because, just like Pakeha, Maori New Zealanders want more democracy, not less democracy. If we are not prepared to countenance the concept of ballot-box democracy for Maori in meaningful ways, then we will be confronting the matchbox. And that is where this Government has helped to take us today.

IAN REVELL (Birkenhead): I rise to speak on this matter, which, quite frankly, I regard as being an utter disgrace that many New Zealanders will be reeling from. Many New Zealanders of all colours and creeds will feel a disgrace for the events that have occurred at Takahue School.

This occupation has been going on since March 1995. Although the Government has, naturally, been criticised by the member for Tauranga for inaction, this Government has in fact patiently waited for the local Maori---the Muriwhenua---to try to advance the process and to persuade the occupiers to leave. There has been a great deal of tension in this area between the protesters---many of whom are nationally known protesters with no connection whatever with that local community. Up against them on the other side of the road, as it were, were the local community, which wanted to enter into a constructive lease.

Maori and Pakeha had joined together in that community and had asked to lease that school building so that constructive activity for the entire community could commence there. The protesters said: ``Not so! We are going to occupy the building. It's ours.'' The protesters had very little, if anything, to support their claim, and threats were being made. For example, as one protester was dragged out this morning she was reported as saying: ``If we can't have it, no one can.'' I know from other reports that threats have been made against the houses belonging to local trust members, against the local Department of Conservation representative, and against anybody else who dares to speak up on these matters.

Land occupations together with violence, damage, or arson, have got to the point where this Parliament has to send a clear message that enough is enough. We will not allow this situation to go on. We will have to ensure and determine that the rule of law is followed by all New Zealanders in this country. Once and for all a message must be sent that arson and other criminal activity will be met by the full force of the law, and that people will have to answer in courts for their actions.

The media reports that stated that young children with lit torches were encouraged to circle this empty school building and to set it alight in some crazy, vindictive act of malicious vandalism and

damage are horrifying to the ears of New Zealanders. I know that my constituents in Birkenhead and Northcote are simply saying that enough is enough. This Government has done more to advance the settlement of longstanding---and, in many cases, quite fair---claims against the Crown than has any other Government in the history of this country. Far more has been done in the last 4 years than in the last 154 years, and that is an incontrovertible fact.

The Labour Government saw fit to open up the process of treaty claims in the 1980s, but did not provide the resources and wherewithal for that to happen. The National Government, under the leadership of the Minister in charge of Treaty of Waitangi Negotiations, has set about negotiating in good faith, using the Crown and the Crown's agents to get settlements on the major claims. Terrific advances have been made, not only in the small claims over burial sites and others but also, of course, with the most recent settlement of the Tainui claim involving large areas in the Waikato. A very ingenious settlement was put together that has satisfied all parties. Good progress is being made in the Taranaki and far north areas, despite the black spot that this morning's events have put over that progress.

This Government is committed to resolving longstanding Maori grievances. A large sum of taxpayers' money has been set aside so that the Minister can fund settlements for those claims. Of course, Crown money---taxpayers' money---will not be handed over to claimants simply because they make a claim on the basis of oral evidence. Proper research has to be done. With hundreds of claims now having been lodged in the expectation that they can be dealt with, obviously the time of researchers and staff is fully committed.

Where claims have been made without accompanying research, or in the many cases, such as for these school grounds and property, where there are conflicting claims from different parties---both of whom are claiming that they own or should have the land returned to them---then the Minister is in an impossible situation in that negotiations for a settlement of this type cannot even commence until it is certain who the rightful claimants are and who the Minister ought to be dealing with.

The Minister was making good progress in determining that. He had a lot of assistance from the local iwi and in particular from Mr Matiu Rata, the former member of Parliament, who has been playing a prominent role up there. It is interesting that not only the lawful owners of the building have been urging the occupiers to get out but also the local iwi and Mr Rata have been doing so.

An enormous amount of tension has been caused in the small community because a week ago the local community hall was burnt down. Naturally accusations are flying backwards and forwards as to who was responsible for that. Of course, today we have the very sad event where a school building has been torched as people were lawfully removed from that building, under a proper trespass notice. We have also had the sad sight of young children carrying lit torches around and setting light to tyres and other accelerant-type materials around the building.

So today we have a situation where no one can have the school. It has gone. The building has gone. The constructive activity that was proposed by the local Maori and Pakeha community who had come together to form that trust, is gone. We must ensure that this does not happen again. From my perspective that means that the Crown and its agents, and if not the Crown, the owners of land, will have to act a lot more promptly to remove protesters who are unlawfully occupying land. In this particular case every opportunity was given to persuade people to depart from that land. Those persuasions and discussions went on over many months and it became quite clear only

at the very end that time had been played for and that the occupiers had no intention of leaving.

At the urging of my colleague the member for Far North, who, frankly, has himself had enough of these occupations and of the damage that has been done to race relations in the far north, I have joined a group of colleagues---

Hon. Winston Peters: Does the member mean Hone? Hone's a joke and everybody knows it.

IAN REVELL: If the member for Tauranga is not concerned about the damage to race relations going on in the far north, then he ought to be. He ought to pay attention to this debate. In the far north a great division is starting to occur between some Maori and some Pakeha. It is not being helped by the actions of extremists on both sides. I for one want progress to be made with the moderates. I am for progress. I have been active in selling in my own electorate the fact that these settlements must take place, that many of the claims are justified, and that it is much better for the Crown to get on with settling with claimants and with getting Maori and other New Zealanders going forward together.

The constraint always must be on a Government. Something the Deputy Leader of the Opposition conveniently overlooks totally now that he is in Opposition is that, of course, there is a substantial price to the settlements---a substantial cost to the taxpayer. The National Government decided to set a ceiling of \$1 billion, which most New Zealanders probably think is more than reasonable. Many letters have been received by colleagues that state probably that a dollar is too much, while, from the perspective of many of the claimants, \$10 or \$20 billion would probably not be enough.

However, we have a situation in which today's generation of taxpayers is being required to pay the costs of grievances and of responding to land seizures and confiscations that took place 150 years ago. So not only do these settlements have to be fair to those who have lost land, or to the descendants of those who have lost land, but also they have to be fair to today's generation of taxpayers who have to foot the Bill.

I conclude by saying that this Government has done more than any other Government in the history of this land in getting on with, negotiating, and settling land grievances. I understand that to date it has settled about 100 claims---those claims have certainly been dealt with and disposed of. Many, of course, are claims that do not have any foundation in research. Others, even with no research done, have been found to be of substance, and settlements have taken place.

I am proud of the Government's actions in getting on and moving forward. The actions of these protesters up north simply set race relations back 150 years.

GEORGE HAWKINS (Manurewa): Everyone will deplore what has happened at Takahue School this morning, but people should listen very carefully to the Government message. This year the Government wins out of this. The Government likes having these protests because it wins. People will get on the train or the bus tonight and they will see pictures of police arresting protesters. These are protesters who have got arrested because the Government did not act long ago. Earlier this year it happened at Moutoa Gardens. Who was the winner? The Government went up in the polls because of the trouble. What is happening is that we in New Zealand are fighting one another, and it is not good. The picture on the front page of the Evening Post of policemen arresting New Zealanders because the Government has not got off its backside and returned the land, is a disgrace.

Alec Neill: Absolute nonsense!

GEORGE HAWKINS: Well, there is the sole back-bencher for the National Party sitting there. Because the Government does not think

that this is a very big issue, it has a couple of Ministers here. The Minister in charge of Treaty of Waitangi Negotiations had his say and ran. I have to say that it is not good enough. The Government has been sitting around doing nothing. Have a look at what happened at Tamaki before today! The Government spent \$2.4 million to keep the protesters away. It spent \$2.4 million on security guards. What does the Government do up there in a little village? It treats those people with contempt. The Government says that it is discussing it. The Government came up with a fiscal envelope and it goes around the countryside trying to get people to agree. What do we have in the House? We have three Tory members of Parliament who read their newspapers, but who do not really care.

This is a big issue in New Zealand. The racial issue will be the big issue of the 1990s. It is also going to be the big issue come the turn of the century, because this Government is not prepared to deal with the matter at all. It has a Prime Minister who goes around the world impersonating world leaders. He thinks he is a world leader. He should be here dealing with things responsibly. This is not---

Hon. Winston Peters: There's only two now.

GEORGE HAWKINS: No, there is one over there. There are three National members here. It is a disgrace. We have a Government---

[The question having been raised by the Senior Opposition Whip and the bell having been rung, the Speaker declared that a quorum was present.]

GEORGE HAWKINS: It is a disgrace that the Government, which is responsible for keeping a quorum on such an important issue, cannot have enough members in this House. The Government has washed its hands of these racial issues. It has put the issues in the hands of the local mayor to try to solve. That is what it did in Wanganui. It had missed the point in trying to solve things. Sue James was up there this morning. She is taking on a load that the Ministers of that Government should be taking on board, but they are still too afraid to take up. I would not be surprised if the National Party changes its colours from blue to yellow. I think it is absolutely scared of tackling the issue. The Government wants to keep it going as long as it can. The Government kept the Wanganui situation going as long as it could. It kept the Tamaki thing going as long as it could. Today, up in the north, we see a Government that is not in control. But if one happens to look under the surface, one has to say: ``Why does the Government let these go on? Why doesn't the Government get in and settle this?''.

This is a very small claim. Goodness, the school was gifted by the Maori people. That school closed in 1977, and, at the time, it was handed over to defence. The Government has been aware, during the whole 5 years it has been in Government, of this matter. But what has it done? It has done absolutely nothing. It is all right for the Minister in charge of Treaty of Waitangi Negotiations to go wandering around saying: ``Look, I have got a billion dollars to settle.'', but he is not doing anything to settle the claims. The Maori people objected to, and rejected, the fiscal envelope. It does not work. It was a cheap, clever stunt by the Government. It was cheap because the Government knew that it would not have to cough up the billion dollars. Now we have, in the far north, people being dragged away. Is it not a disgrace that children are used in these protests? It is a disgrace. It is shocking that young people are growing up, learning at an early age, to be protesters. They are learning at an early age that they cannot trust the Government. These young people will end up being adults who will not trust the Government.

Warren Kyd: What nonsense!

GEORGE HAWKINS: There is the member for Hauraki saying: ``What nonsense!'' . I wonder what he last did to help solve the Maori

problem. I can tell members that this issue probably did not go to Cabinet on Monday, or the Monday before. It would not have gone there. The Government knew of the situation and it sat on its hands. It sat on its hands hoping that it would come to what happened today. The Government was hoping that it would make a great television spectacle. People will sit down to have their tea tonight in front of the television, and they will see scenes such as those in the Evening Post. New Zealanders will then turn round and blame the Maori. They will not blame the Government, which is the guilty party, because the Government will turn round and try to make it a law and order issue. It is an issue about Maori rights, it is an issue about Maori grievances, and the Government is not doing anything. That is what this issue is about.

Ian Revell: It's about Maori criminals.

GEORGE HAWKINS: I did not hear the member, and it is probably just as well. What has the Prime Minister done to try to settle any of these arguments? He has not done anything, because he is not doing what a Prime Minister should. A Prime Minister should lead. He should not hide in his office when the going gets tough. The problem is that the Prime Minister will not face it. The Prime Minister hides in his office, and he gives the work to junior Ministers. He scurries away. He will go where any world leaders might shake his hand and have their photographs taken with him, but he will not front up. Why is he not on the plane up to Kaitaia today? It is because he is not a leader at all. That person is a disgrace. He has learnt from Rob Muldoon's day---regarding Bastion Point---that the longer it is kept going, the more the public gets heated up over it, and more votes are in it for the National Party.

I have to say to the people of New Zealand: ``Do not be fooled.'' This is all about settlements not being taken seriously, the Government not moving quickly enough, and not putting the resources into the tribunal so that these things can happen. We have people up north---Maori and Pakeha---distressed by what has gone on in their local community. There is no pleasure for an Opposition having to get up to say that it is because Government members sat on their hands. Government members will not face up to the biggest issue in this country. They will just run around saying: ``We'll talk.''

They tried to organise talks last week, and tried to pressure Maori people into coming up with four people to do their dirty work. I say that that is not good enough, and I say that the Government has to start addressing the problem. The Prime Minister of this country must start to take some responsibility. If he does not, he has failed.

PAULINE GARDINER (Wellington-Karori): I would like to offer my perspective in this debate. I cannot claim to speak for Maori or even to understand the way they think, but I can tell the way I think. My perspective is actually based on experience, participation in, and an understanding of Maori issues over a period of time. I do think that the Government does have it wrong. I do think that the Minister of Justice has tried his very best, and continues to try his very best, and is committed to the issue. But his commitment is actually not going to go very much further, because the process is wrong. I think a debate like this should serve to try to make this a cross-party commitment, but it is not going to work when there is hardly a quorum of Government members who actually want to listen.

I think that the framework is wrong because the Government is trying to apply the way we think to the way other people think, and that is different. It is not wrong, it is just different. We think differently. The fiscal envelope policy makes absolute, logical, good common sense to me and to many of us, but it does not actually make

that kind of sense to the people who are most affected. So if it does not make that kind of sense to them, why are we not listening to hear what does make sense to them, to hear what they say?

Two things were said---the member for Birkenhead, who spoke prior to me, said one thing, and the Minister of Maori Affairs said another---that for me epitomise where the Government is going wrong. The member for Birkenhead said we have to realise, we have to acknowledge, and we have to understand that taxpayers are paying the cost of grievances from a century past. But that is not actually looking at the other side of the coin. Maori have been paying the cost for over 150 years of policies that undermined a people, undermined a culture, undermined a language, and undermined a total economic base. They are still paying for that. That cost is going to continue for a lot longer yet, far longer than we are asking the taxpayer of New Zealand to cover---maybe a few years, maybe a few decades---but that cost, when it is analysed, is actually a very small cost. If people want to try to do something about the weakest base of any society, it takes a huge commitment.

I said before that different is not wrong, different is not lesser, and different is not weaker. Both the Government and Maori actually want the same outcome. They both want a sustainable and fair outcome. Both think the same way in that respect, but they just think totally differently about the way to achieve that fair, sustainable outcome. So if we could just accept that, if for once the Government could trust that someone else might have an idea of how to get there, because if it trusted that the outcome is intended to be the same, if they can trust someone else to allow a process of getting to that outcome, we might just find things change dramatically.

Maori solutions may be quite different from what we think at the moment are logical, common-sense, practical solutions. I think that some of the solutions the Government has proposed are that way. Separate does not actually need to be negative. I always look at railway lines; they are absolutely separate, but they get the train to the station at exactly the same time. Maybe we should be looking at a concept of separate not being negative. We use the term separate as with a negative connotation.

When they as a Government and we as a Parliament have to confront something like Takahue, it is extraordinarily damaging. It is extraordinarily damaging in here because of the goodwill, commitment, and understanding that has been built up by the Minister of Justice. Then we start crossfire that just continues to be negative. The picture on the front page this morning, I have to agree with the member for Manurewa, is actually good news for Government members, because they walk a tightrope. They walk a tightrope of \$1 billion being too much or too little, but the majority of New Zealanders are not overly committed to being too tolerant for too long, and \$1 billion seems like a lot of money. So that photograph is actually good news for the Government in the polls. That is the pity of it.

But we have to look at what is happening, which is inciting the frustration to such a level that we see now the distrust by a group of people, and the direction we are seeing with those continuing occupations. The Government continues to try to sell land with question marks over it. Where does that engender the trust in those people who have grievances? It does not engender trust. In no way can I condone those actions. In fact I would have taken stronger action and more dramatic action, more quickly. Hindsight is a wonderful gift.

I do not want to criticise the police, because they are in between a rock and a hard place, but surely when those tyres were carted in there it must have set some alarm bells ringing. Surely, if there was nothing else they could have done, they could have removed the tyres.

Surely when they saw people like Ken Mair and others who did not have a right to be there, they could have done something. I actually think that if we got the process more appropriately placed, if we got it right, then we could take stronger action against those people who have no right to be there, the ones who go there to stir, the ones who go there to cause those headlines, and the ones who go there to cause distress. I would come down on them hard.

I do not believe they have a mandate; I think they are criminal. I think we should do something tougher about them. They should wear the force of the law. I do not want to criticise the police, because I do not know what instructions they have had. But those tyres and things like that could have been moved sooner.

As far as establishing who owns Takahue, there may be only one way, and that is the old way. It is not our way. We often talk about how long it takes to get through all the palaver at hui. We have to sit there, and we say: ``Oh, ho hum, how long is this going to go on?'', but that is the tradition. We all get sick of it. We all see it as a waste of time. We do, because that is not our way. But this problem is so difficult and so great that we actually have to do it their way to get any movement.

How long did it take to sign the treaty? I think the hui was over several days to get the Treaty of Waitangi signed. We might actually have to make a commitment in time, effort, and resources to sit down over a period of 3 or 4 days with all and sundry, and let all and sundry have their say, because that is the way to reach a resolution. There may not be any other way. It may take a lot of the Minister's time. It may take a lot of the Prime Minister's time. But if the Prime Minister sat with some of those groups, be they radical or not, if they want to have a say he should let them have a say.

The other thing is that the Waitangi Tribunal is not well resourced. We know that there are a number of claims sitting before the Waitangi Tribunal now with no dispute. Why can we not resource groups from the Waitangi Tribunal, and give them a mandate to go out and settle claims to a certain level? They go, they sit down, they talk, they take the initiative for the local people. They sort things out if there is no argument. I know of at least 12 claims that are before the tribunal in that respect now. They are given a mandate by the Government to spend up to \$60,000, or up to \$100,000, or up to \$80,000, whatever a nominated figure may be to clear out those claims that can be committed to. It is a huge time, and perhaps resource, commitment, but that is probably the only way. It is the only way that has not been tried to any great extent with any great degree of commitment. To our way of thinking, the solution should be simple, because we think differently. We have a mind-set of a management type of structure that clearly sets out and determines the authority. We are not dealing with that type of thinking with Maoridom. It does not have that formal structure.

For those who ask why we should do it their way, if we do not do it their way in this instance we will not resolve issues. It will not work. The fiscal envelope will not work. The Government calling for another consultative group will not work, because if that group disagrees with what the Government wants, what does it matter that it was done with consultation? Its own specialist ministry said that the fiscal envelope will not work, that the cap will not work. The Government will not listen, and as mentioned before, the other statement made by the Minister of Maori Affairs epitomised for me that it will not work, when he said: ``We will listen to Maori. They can come to us. They can tell us what they want, within the framework already set.''

Therein lies the rub. It has not asked the people to participate in the framework. What are Government members afraid of? What are



they afraid that Maori will say within that framework, I wonder. What if Maori came back and said: ``\$5 billion over 10 years'', does that matter?

Hon. Mrs T W M TIRIKATENE-SULLIVAN (Southern Maori): I want to say that what has happened and is featured in tonight's Evening Post is unacceptable to this country. We are in a delicate and volatile time.

The first question I would ask is: who were the agitators who fired up the children? The children probably believed that what they were doing was reasonable. I suspect that they were spoken to by people who gave them the weapons to use to start the fire.

I refer to a hui I attended where a young academic male from Auckland said it was his intention to toss a box of matches to the kids and say: ``Auckland is yours; take it.'' I think he meant the street kids, whom he had been talking about. I was disgusted with that young man. I had brought him from having no work to a stage where he had a job and was going to university. He had been in a job for a young man that, for him, had created disesteem. I do not know why. Many very fine people have that job. He had been a truck-driver.

I expressed my great disappointment with him for saying that. I said that if he wanted to instruct children how to set fires, or to agitate children, Maori youth, to carry out such acts, I wanted him to have the courage to do them himself. I asked him if he would, and of course he would not. The first question is: who were the agitators? I do not know. I have not been there.

Secondly, these problems need not go on for as long as that. I did not go to Pakaitore, but I did carry out some research here. The research made it very clear that Pakaitore had been a marae for landing canoes. Under legislation in 1874, as I found in the Journals of the House, the foreshore of the river at Wanganui was made a market-place; it was set aside for a native market. That was very important to the members of Parliament of the day. The Pakeha members of Parliament of the day pointed out how important that market-place was, because Maori from up the river provided all the food for the whole of Wanganui. It was very important to the community.

To have done some research, to have quickly established those facts, and to have settled the matter would not have invited what was added to what was clearly a valid complaint. Instead, it was loaded with all sorts of other factors that are not readily resolved---factors of sovereignty, of tino rangatiratanga.

I refer now to a very wise saying of my father. I cannot recall his exact words of classical oratory, but I would say the purport of his sentiments was that if anyone embarks on an action for a people, if it does not succeed to the benefit of that people it is often counteractive---it is unhelpful. Protesters today should consider such a message. I look to the genuineness of them and of their leadership. Sometimes it is an egotistical exercise, sometimes it is an exercise to obtain publicity, but if it is genuine it should achieve its target eventually---the quicker the better in such cases.

The Waitangi Tribunal is underfunded. The \$2.4 million that was paid out by Government for the security of Tamaki Girls College, a property that was also in dispute, could well have been added to the funding of the Waitangi Tribunal, to bring about more facility for it to do effective work. It is impossible for the tribunal to do much. The budget should be doubled---at least.

Doubling the amount of money available would bring it up to what the Minister's Office of Treaty Settlements receives. The office that advises the Minister on treaty settlements has a budget of over \$8 million, and the Waitangi Tribunal has something like \$3.4 million. Clearly, at least they ought to be on the same level. And, equally clearly, the Waitangi Tribunal---which would be able to look at all these things in a more expeditious manner, would be more efficient,

and would have more targeted research available to it---is unable to do its work. I have a great deal of sympathy for it. I want to see Government---if it is genuine---increase the budget.

I want to make another suggestion---to propose another solution. I believe it would be helpful if the Government was able to call on a group. We talk about consultants when we look at the estimates of departments. I am amazed to see how much money is spent on consultants these days. We should have some learned Maori consultants who are able to travel to such places, and, as quickly as they are able, to get to the main point of the problem. In this case, and in many places, the main point is: who were the original owners of the land; who are their present-day descendants? They are the ones entitled to the land.

I give an example. The Minister of Conservation was speaking earlier. I put in about 5 years of effort to restore land in Kaikoura that belonged to a certain woman. However, she died before I finally had it restored. It was family land. It had been taken over by the Department of Conservation. It was put aside for Ngai Tahu, but Ngai Tahu had no claim on it; the woman who owned the land had a claim on it, and she was the descendant of Whakatau, Hariata Whakatau Beaton. She was the granddaughter of the chief of the area, Whakatau---Kaikoura Whakatau---and it was very clear that there was only one descendant. It was so simple to me, with a knowledge of the whakapapa of this family. It was so simple to settle that.

A school ceased to be used as a school, for which purpose the land had been taken. There was one living descendant in that generation, a granddaughter. She tried so hard, but the bureaucracy was such that the Department of Conservation could not work to unwind the fact that although it had given over the land to what was a very respectable group in the eyes of the Government, that group was not the right owner.

That is what we have to avoid. The solution is simple. The records of the Maori Land Court list the original owners; look them up and find the descendants. That is one simple facility, and a way of solving these matters quickly.

[The time allowed for the debate having expired, the motion lapsed.]

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**Treaty of Waitangi Amendment Bill** (Second Reading)

TREATY OF WAITANGI AMENDMENT BILL

Second Reading

Hon. TAU HENARE (Minister of Maori Affairs): I move, That the Treaty of Waitangi Amendment Bill be now read a second time. The Bill complements the announcement made by the Attorney-General last week of his intention to appoint the Chief Judge of the Maori Land Court and chairperson of the Waitangi Tribunal, Chief Judge Edward Taihakurei Durie, as a judge of the High Court.

The purpose of this amendment is to enable Chief Judge Durie to remain as chairperson of the Waitangi Tribunal upon his taking office as a High Court judge. The intention is that the Chief Judge will share his time between sitting as a High Court judge and as chairperson of the tribunal.

The appointment of Chief Judge Durie has been met with universal endorsement. I want to offer my personal congratulations to the Chief Judge. He has been a tireless worker for the judiciary, and his work as chairperson of the tribunal has gained him the international reputation, mana, and standing that go with the job. I am confident that he will provide a unique insight, and indeed add a new and

valuable dimension to the High Court bench.

I also congratulate my colleague the Attorney-General on having the foresight and the wisdom to make that appointment. Maori have certainly welcomed the appointment. I am sure they will also see the High Court as better reflecting the treaty partnership. I look forward to further appointments, both to the High Court and to the Court of Appeal.

The Bill itself comprises five clauses, and the changes are purely technical in nature. The Act currently requires the chairperson of the Waitangi Tribunal to be the Chief Judge of the Maori Land Court. A new paragraph will be inserted into the Act that will provide that a High Court judge, a retired High Court judge, and the Chief Judge of the Maori Land Court can be appointed as chairperson of the Waitangi Tribunal.

The Bill recommends that the appointment of the chairperson of the tribunal will be made by the Governor-General on the recommendation of the Minister of Maori Affairs, after consultation with the Minister of Justice. There will also be a new subsection providing that the chairperson is to be appointed for a term not exceeding 5 years, and may from time to time be reappointed. The Bill also allows the chairperson of the Waitangi Tribunal to appoint the Chief Judge of the Maori Land Court as the deputy chairperson of the tribunal, if the chairperson is a High Court judge or a retired High Court judge.

There are also a number of little technical changes. Clause 4 amends section 4B, as a consequence of all the proposed amendments. Clause 5 provides that a person who holds office as chairperson of the tribunal at the commencement of this Act will continue in office until that person vacates office as the Chief Judge of the Maori Land Court, but may be appointed chairperson of the tribunal under the new provisions in clause 2 of the Bill.

I think this is a step forward. It is an honest attempt at allowing a person of the standing of Chief Judge Eddie Durie not only to carry out the duties of a High Court judge but also to use his experience, his mana, and his standing to continue in his role as chairperson of the Waitangi Tribunal.

The ASSISTANT SPEAKER (Geoff Braybrooke): Which committee does the Minister wish the Bill to be referred to?

Hon. Phil Goff: That's a good question.

Hon. TAU HENARE: It is a good question, and I am suggesting that we have not actually decided on that because---

Hon. Phil Goff: It'll move nowhere.

Hon. TAU HENARE: It is not going to move nowhere. By the end of the introduction---

Rodney Hide: The Minister can't do that.

Hon. TAU HENARE: He can, actually. I am going to make the decision on my own that it should go to the Government Administration Committee.

The ASSISTANT SPEAKER (Geoff Braybrooke): The Minister is quite in order to move which committee it will go to.

Hon. PHIL GOFF (NZ Labour---New Lynn): It is typical of the mismanagement of the affairs of this House that a Minister brings in a Bill, reads out the speech, but somebody forgot to write into the speech for him which committee it was to be sent to, and off the top of his head the Minister comes into the House and suggests that it goes to the Government Administration Committee. He might have chosen Justice and Law Reform because it is about the appointment of the chief of a tribunal and the High Court, or it might even have gone to Maori Affairs, but to suggest that it goes to Government Administration is really quite bizarre.

We in this House have seen over the last 3 weeks, as the wheels

have come off this Government, time and time again the absolute mismanagement of the House and the inability of Ministers to know what they are meant to be doing, and their inability even to understand the briefing that ought to have been given to them by their officials beforehand. That is really quite remarkable.

I want now to come back to the Bill because it is the intention of the Labour Party to support the introduction of the Bill and to support its reference to a relevant committee. I hope that now the Attorney-General has come into the House he might give his colleague the Minister of Maori Affairs some advice on where the Bill should really be going, because some aspects of it do need proper consideration before a select committee.

I also welcome the fact that the Government has had a change of heart and the Bill is now going to a select committee. I believe that in almost every instance a Bill should properly be referred to a select committee so members of the community have the chance to have an input, and members of this House have the opportunity over a period of time to properly examine it.

I want to look first at the technical aspects of this Bill, which are reasonably straightforward, but I want in particular then to examine the real reason for its introduction. The real reason for the introduction of this legislation is to allow Chief Judge Eddie Durie to be elevated to the High Court without his abilities and expertise being lost from the Waitangi Tribunal at a critical point in time for that tribunal.

I should foreshadow the fact that I am sympathetic to the Attorney-General's desire to maintain Eddie Durie on the Waitangi Tribunal as its chair, as well as recognising his inherent abilities by elevating him to the High Court.

The aim of the Bill as set out is to amend the Treaty of Waitangi Act to extend the class of persons who may be chairperson of the Waitangi Tribunal to include a High Court judge or a retired High Court judge, as well as the current situation where the head of the tribunal is the Chief Judge of the Maori Land Court.

The legislation as it stands is set out in section 4(2)(a) of the Treaty of Waitangi Act. That currently provides that the Chief Judge of the Maori Land Court is a member of the Waitangi Tribunal and is also its chairperson. Section 4A(1) provides that the chairperson of the tribunal may from time to time appoint a judge of the Maori Land Court to be a deputy chairperson of the tribunal.

What this legislation does is to broaden the area from which the chief of the Waitangi Tribunal can be drawn. It provides that the judge or a retired judge of the High Court, or the Chief Judge of the Maori Land Court may be appointed as both a member of the Waitangi Tribunal and as its chairperson for a term of 5 years. The judge would be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs, but after consultation with the Minister of Justice. As we have just seen in the House, certainly with the current Minister of Maori Affairs, he certainly needs to consult a little better in that regard.

The deputy chairperson of the tribunal, under this Bill, must be a Maori Land Court judge, who may be the Chief Judge. That is set out in clause 3. In clause 4 of the Bill is another technical change which states that the appointment of a judge to this position is not to affect his or her tenure in relation to rank, title, status, precedence, salary, and allowances, and so on.

The last clause of the Bill really comes to the nub of why we have the Bill before the House. It states that the present chairperson would continue in office until he vacates the office of Chief Judge of the Maori Land Court, but he may be appointed again as chairperson by virtue of his being a High Court judge. That is really what this

legislation is about.

I understand from the Minister that the appointment of Chief Judge Durie to the High Court will take effect in October. It will initially be a temporary appointment until a permanent vacancy on that body becomes available. I also understand from the Minister that it is the intention of the Government and the Chief Justice that Chief Judge Durie will spend approximately half his time as a judge of the High Court, and half as chairperson of the Waitangi Tribunal.

I have to say that it is unusual for legislation to be altered because of an individual's position, and normally on this side of the House we would be reluctant to contemplate making a change in law simply to facilitate the appointment of an individual. But I believe, having considered the information given to us by the Minister, that in this instance it is justified.

I want to take the opportunity to congratulate Chief Judge Eddie Durie on his appointment to the High Court. He will be the first Maori member of the High Court, and I want to stress that this appointment is on the basis of his considerable abilities and in no way represents any form of tokenism.

Chief Judge Durie has been a judge for 24 years. I think he was first appointed in 1974 as a judge of the Maori Land Court at the very young age, for a judge, of 34 years. I believe that his appointment to the High Court will provide that body with a broader basis of representation. It will provide it with valuable insight and experience, and thus will strengthen that particular body.

It is fair to say that this appointment has received universal acclaim. Chief Judge Durie is respected by his judicial colleagues, who have welcomed his elevation to the High Court. As tribunal chair he has performed that very difficult role in a remarkably effective and impartial way. He has overseen the key land claim reports including the Manukau Harbour, the Te Ati Awa claim, the Motunui claim, the Muriwhenua fisheries claim, and the series of claims that have been the result of the settlement path since 1990. It is accepted that he is the country's foremost legal authority on Maori customs and their place in the laws of the land.

What is most important about Chief Judge Durie is that he has devoted his time and efforts to achieving the promise of partnership between Maori and non-Maori as set out in the Treaty of Waitangi. He is a particularly appropriate person because he moves easily in both cultures, and he has often stressed, in fact, that the treaty is as much about confirming the place of Pakeha in New Zealand society as it is about Maori rights.

He is a judge who has acted firmly. I recall the story told to me by Joe Hawke, who was the first claimant under the Treaty of Waitangi after the amendment in 1985, that he came into the court and the first thing he heard from Judge Durie was: ``OK Hawke, there'll be no Hollywoods in my court.'' Joe followed that advice and the rest is history.

He is a person who I think has an appropriate bicultural approach that is a product of his upbringing and his own experience, and that has enabled him to win the confidence of both communities. In fact, his supreme achievement has been to steer a calm and reasoned approach through the troubled issues that he has had to deal with. He has favoured neither community. He has in fact been attacked by both sides---from one side as being too radical, and from the other side as being too conservative---which perhaps suggests that he has got the balance about right. In favouring neither community he has carried out the task that was incumbent upon that office, which is going to a great effort to get to the truth of the historic claims.

I certainly welcome his appointment as the first Maori member of the High Court. For that reason I support this Bill. However, there

are a number of concerns that need to be addressed before the select committee. One is in relation to the precedent it sets.

Rt Hon. D A M GRAHAM (Attorney-General): I am very happy to rise in support of the Treaty of Waitangi Amendment Bill. I want to speak for a few moments only. I am grateful to the Hon. Phil Goff for the comments he has made. It is unusual for this House to debate an appointment to any court, but this is a little bit different from the norm because it requires an amendment to achieve the wishes of the Government and, indeed, of Justice Durie.

I say immediately that as the Attorney-General it is my responsibility to appoint judges to the High Court. It is not a function of the Executive to do so, it is a matter for the Attorney-General acting independently. It is a role that I take extraordinarily seriously, as I am sure all Attorneys-General before me have done. For some time I have had approaches from judges of the Court of Appeal and the High Court of New Zealand expressing their confidence in the judge and hoping that it would not be too long before he could be appointed to the High Court bench.

I was also well aware of the high standing that Justice Durie has in the legal community generally and indeed throughout New Zealand amongst those who know of him and the work that he has done. He is a man of great maturity; he is a man who, perhaps in reflection of that, has been awarded two honorary doctorates from two separate universities in New Zealand, which I think is the mark of the man. I think that he has served his country, in a most difficult area, extraordinarily well. I was very pleased therefore to be able to advise Cabinet recently of my intention to appoint him as a High Court judge.

Of course, I am also the Minister in charge of Treaty of Waitangi Negotiations and, as such, I have had a great deal to do with Chief Judge Durie of the Maori Land Court as chairperson of the Waitangi Tribunal. I have, perhaps more than most in this House, read the reports of the Waitangi Tribunal as they have come out. I have always been impressed with the approach taken by the chairperson, in the most difficult circumstances.

I am aware that there will be some views expressed---I anticipate them in this House shortly---that the Waitangi Tribunal is a very political organisation. To that I reply as follows: there are many commissions of inquiry, of which the Waitangi Tribunal is but one, that produce findings of fact and, indeed, sometimes make recommendations, but not always, that have political consequences that can be quite major. But it is nevertheless a commission of inquiry.

The Waitangi Tribunal is not a court, it is a commission of inquiry, and it has been in situ now since 1975. The chief judge, as he was, has been the chairperson since 1981. In that time treaty jurisprudence in New Zealand has developed in conjunction with the decisions of the High Court and the Court of Appeal, and, indeed, the Privy Council. They have worked together to try to work out how we can resolve some of the outstanding issues of the past so that the races in New Zealand can live in harmony.

That is not an easy area, and we all know that---I perhaps better than most. But I think that we are making some progress, and the contribution of this particular judge to that field has been outstanding. He is well respected, not only in New Zealand, but internationally. I am sure that his work will go down as one of the great contributions to New Zealand's jurisprudence. I was very pleased to be able to advise Cabinet, as I said a moment ago, of his appointment to the High Court bench, but I was equally anxious not to lose his experience, his maturity, and his contribution to the

Waitangi Tribunal because we are still going through the process.

In a quite bizarre, odd, and unusual circumstance such as this the Chief Justice, the Rt Hon. Sir Thomas Eichelbaum, agreed that he should remain serving on the Waitangi Tribunal---perhaps spending half his time there and half his time as a High Court judge. That is very, very unusual indeed. But in my view the unique characteristics of this person and his skills justify that, and that is why it has been done.

This Bill is a short Bill and it relates to enabling a High Court judge to be the chairperson of the Waitangi Tribunal. I hope that it has the support of the House. It is not appropriate normally for this House to debate appointments to the bench in New Zealand, but because of the peculiar circumstances here it does seem that some debate will be called for. I hope that the members of this House will regard this particular judge with the integrity and respect with which I hold him, and I am sure that they do.

I accept that there can be arguments about the wisdom of having a High Court judge sit on a commission of inquiry, but there is nothing new about that. We had Justice Mahon sit on the Erebus inquiry, and there were certainly some political repercussions from that. We had Judge Noble sit on the Cave Creek inquiry, and political considerations flowed from that as well. So I do not think it is fair to say that that should be a bar or should in some way denigrate the High Court bench, if that is suggested. It would certainly be a concept with which I disagree. I simply want to extend my congratulations to---

Hon. Phil Goff: Which select committee will it go to?

Rt Hon. D A M GRAHAM: The Government Administration Committee.

Hon. Phil Goff: When was that decided?

Rt Hon. D A M GRAHAM: We are totally in control on which select committee the Bill is going to. It is a matter of just keeping everybody working hard.

I extend my congratulations to the new judge. I am aware from talking to him personally that he sees it as a great challenge. I am as confident as I can be that he will serve his country as well as a High Court judge as he has as chairperson of the Waitangi Tribunal. I wish him well.

TARIANA TURIA (NZ Labour): Labour supports the second reading of this Bill. This Bill changes the law so that Chief Judge Durie can be appointed to the High Court while retaining his chairmanship of the Waitangi Tribunal. Currently the chairperson of the Waitangi Tribunal must be the Chief Judge of the Maori Land Court. It is not possible to be both a Maori Land Court judge and a High Court judge, so under the law as it stands Judge Durie would be required to resign as the chairperson of the Waitangi Tribunal because of his promotion.

This law change amends the Treaty of Waitangi Act so that the chairperson of the Waitangi Tribunal may be either the Chief Judge of the Maori Land Court, or a High Court judge, or a retired High Court judge. So while Judge Durie loses the qualification for the position of being the Chief Judge of the Maori Land Court, he gains the qualification of being a High Court judge. This law change is effectively being made for the sole reason of maintaining Judge Durie in the position of chairperson of Waitangi Tribunal.

In fact, the provision that the chairperson may be even a retired High Court judge seems to indicate that the Government entertains the possibility of Judge Durie continuing in that role even after retirement. This may well be a good thing. However, this Bill may open the gate a little too wide if it really is being passed solely to ensure Judge Durie's continued tenure.

While there is enormous respect for Judge Durie, there are other

Maori judges whom Maori would consider to have considerable experience to chair the Waitangi Tribunal, and this must not be overlooked. No one person should be seen to hold all the wisdom and knowledge. Of course, while we acknowledge Judge Durie's great knowledge and expertise, we must always acknowledge that there are others also who have great knowledge and expertise on matters Maori.

Judge Durie is said to be the first Maori appointed to the High Court. I am not absolutely sure of that, because I understand that there is another High Court judge, who happens to be a woman, also of iwi descent. While this development is welcome, hopefully, this promotion will help to bring more Maori up into the top layers of the legal system. However, the fact that Judge Durie will currently be one of the only Maori High Court judges, and may well remain the only known one in the immediate future, draws into question the wisdom of the blanket rule to change the Treaty of Waitangi Act that will allow the chairperson of the Waitangi Tribunal to be a High Court judge, or a retired High Court judge.

While it is likely that should Judge Durie, for whatever reason, become unable to perform that role in the future chairpersonship would return to the Chief Judge of the Maori Land Court, that would not necessarily happen. I am concerned we could end up with a situation whereby the Chief Judge of the Maori Land Court is not of Maori descent. I take into account what Phil Goff said---namely, that one of the requirements of a position such as this is the ability to have a bicultural approach. There would be an expectation from Maori people that this person would definitely be of Maori descent.

It would be seen as a backward step, given the large number of Maori studying law and becoming successful lawyers, but not progressing to become part of the judiciary. Currently, there are only a few Maori judges elsewhere in the courts system. The only one that I know of is a woman.

It is important that this issue is addressed urgently. We need more Maori judges, and, in particular, we need more Maori woman judges. There is a considerable pool of Maori lawyers to choose from. I would respectfully suggest that the Minister of Maori Affairs and the Minister of Justice address this matter as urgently as they have addressed this appointment.

I take this opportunity to congratulate Judge Durie on his appointment to the High Court.

JOHN WRIGHT (The Alliance): The Alliance will support this Bill going to a select committee. The matter was raised at a meeting of the Business Committee that I attended a week or so ago, and at that stage it was requested that the Bill be allowed to proceed without going to a select committee. However, I think it is fair to say that we should not rush semi-constitutional matters.

There is no slur at all on the judge whose name has been connected with this Bill. In a sense it is unfortunate that a name has been connected with the Bill. When we deal with constitutional matters---as this is; even if it appears to be a relatively minor constitutional change---there is always a danger of that person becoming the symbol of that change. I believe that the legal profession, in particular---because this is its area of expertise---and also the wider public of New Zealand should have an opportunity to comment when we are making fundamental changes to our constitutional set-up.

I hope that this Bill does not become a Bill about whether one particular person should be a judge of the High Court and be able to hold a separate role at the same time. I hope that it does become principally a discussion on the ramifications of members of the judiciary sitting in different courts where there may, or may not, be



some conflict between the matters they are called on to adjudicate in their different and respective courts.

While the Bill is very minor, it does have some ramifications. The previous speaker, Tariana Turia, did signal some of the concerns about the Bill opening the gate to a wider range of changes further down the line. I would like the select committee to consider seriously all the matters involved in this Bill and all the potential ramifications, and not just the rapid appointment of one person to the High Court.

As I said before, the Alliance will support this Bill going to the select committee. We look forward to hearing the submissions and the arguments on this constitutional matter.

PATRICIA SCHNAUER (ACT NZ): First, I congratulate Chief Judge Edward Durie on his appointment to the High Court bench, and on behalf of ACT I extend our best wishes to him in his new role. I want to make it quite clear that nothing that I will say in this debate is in any way personal to Chief Judge Durie, or in any way reflects on his appointment.

On the contrary, if his appointment was simply an appointment to serve on the High Court bench without any qualifications, then, indeed, this issue and this amending Bill would never have come before this Parliament. Very regrettably, that is not the position. The very fact that the Minister is required, on Chief Judge Durie's appointment as a High Court judge, to introduce an amendment to existing legislation means that this is no ordinary appointment. Indeed, we heard the Attorney-General say this morning that the appointment of Chief Judge Durie was somewhat bizarre and unusual.

This Bill proposes to extend the eligibility for chairmanship of the Waitangi Tribunal to include High Court judges and retired judges. ACT opposes this Bill and opposes that proposal, and we do so for the following reasons.

It is a fundamental, constitutional principle of our democracy that the judiciary, the Legislature and the executive maintain their separate independence. I was reminded of that in very clear terms last year when this House was debating the ongoing tenure for Judge Beattie. There were a number of occasions during that debate when, Mr Speaker, you ruled that to criticise the judiciary in this House was inappropriate and could not be allowed---rulings, I might say, that I support.

In other words, a constitutional convention requires that politics and the judiciary do not mix. I say that again. Politics and the judiciary should never mix. The reason for that is obvious. Any judge coming to a sensitive case with publicly expressed and known political views will find it far more difficult to gain the confidence of the litigants that their case will be fairly considered and tried than a judge who has no public political position on that issue. Indeed, litigants may feel that a judge who is seen to be associated with any political decisions involving political outcomes may have pre-decided that particular case.

That is not to say that judges are incapable of separating their own personal political views from the judicial task they face in any one particular case. I am sure they can, but that is not the issue.

The important issue is public perception. It is expressed in the legal maxim that justice must not only be done, but it must be seen to be done. Take this week's decision by High Court judge the Hon. Justice Paterson who was asked to decide whether the Maori Fisheries Act required the Waitangi Fisheries Commission to distribute assets solely to iwi, or whether the commission's distribution should include Maori urban trusts.

The issues involved were certainly controversial ones for Maori. They clearly have significant political overtones as can be seen by

the fact that the Minister of Maori Affairs, and some members of this House, have commented publicly on that judge's decision. Yet the High Court and the Hon. Justice Paterson have quite properly been left out of the controversy.

Will the same dispassionate separation of judicial and political opinions be possible if Chief Judge Durie is both a High Court judge and chairman of the Waitangi Tribunal? That is the issue, and, I think, the answer is no.

If we are to continue to uphold the constitutional principle that the judiciary remain independent from politics---and we must---then Chief Judge Durie continuing as the chairman of the Waitangi Tribunal seems to me to be a mistake. With respect, I suggest that the ongoing position of chairman of the Waitangi Tribunal by His Honour Chief Judge Durie may in at least some cases suggest to litigants that Chief Judge Durie has a view on political issues or is associated with decisions involving political outcomes. That feeling, justified or not, might lead some litigants to feel less confident about having their case heard before him.

Even if one says that the Waitangi Tribunal decisions are not political---which in itself is arguable---certainly the outcomes of those decisions are highly political. If one asked members of the public whether they felt the Waitangi Tribunal was politically neutral in the same way that they felt the High Court of New Zealand was politically neutral, most New Zealanders would say the Waitangi Tribunal has been making political decisions in a way that the courts have not. That is not a criticism of the Waitangi Tribunal, rather it is a reflection on the different role that that tribunal plays compared with the traditional role of the High Court.

Undoubtedly there will be public criticism from time to time of Waitangi Tribunal decisions. In a democracy, criticism should not be stifled on the grounds that the chairman is a High Court judge, but unfortunately such criticism is bound to affect the judge when he appears as a judge. The public will not be able to separate his roles.

If one accepts that, then the proposal that a High Court judge remain as head of the Waitangi Tribunal must be wrong. The public's perception of Chief Judge Durie will undoubtedly be coloured by the political consequences flowing from his tenure as chairman of the Waitangi Tribunal, despite the fact that the tribunal is comprised of more than one member, and Chief Judge Durie's view on occasions may indeed have been overruled by a majority. That is the potential problem this Bill gives rise to. That is the issue that constitutional lawyers over the centuries have striven to avoid. The mixing of the judiciary and politics can never be recommended under any circumstances, and that is the problem that the Minister is heading straight into by introducing this Bill.

I was surprised this morning to hear that the Attorney-General said that the learned Chief Justice had commented on this Bill. I am surprised about that. I think it was unwise of him to make a statement that would allow him to be drawn into the potential controversy that this Bill gives rise to.

With this Bill the politically independent position of the High Court bench is being placed in jeopardy. ACT New Zealand will continue, and wishes to uphold, the centuries-old constitutional principle that the judiciary---[Interruption] Well, the Minister of Maori Affairs might let out a loud, bored sigh, but this House should never go away from---and it seems to be going away from it in this Bill---this centuries-old principle that the judiciary, the Legislature, and the executive must be kept separate. For that reason the ACT party opposes this Bill, and will continue to do so.

Hon. JIM SUTTON (NZ Labour---Aoraki): Labour supports this Bill, and I will explain why. But first I want to advert to the comments of the ACT spokesperson. ACT claims that there will be a conflict of interest for Chief Judge Durie between his position as a judge of the High Court and his position as chairman of the Waitangi Tribunal. I want to point out to that member that the same allegation could be made in respect of every judge who ever chairs a tribunal or an inquiry---and that is just about every judge of this land at one time or another. Furthermore, the same allegation could be made of Chief Judge Durie now in his role as Chief Judge of the Maori Land Court.

What we have here is a sham. The ACT party is trying to create controversy where there is none. It is trying to undermine the public's confidence in the Waitangi Tribunal, and in the process of historic treaty grievance settlements. That is a despicable tactic. I think it should be exposed for what it is, and this House should dispose promptly of the ACT argument by voting it down. I trust that the House will vote it down in overwhelming numbers, because most members of this House do support the treaty settlement process, are pleased at the integrity that is being displayed by the Waitangi Tribunal, and do cherish the role of Chief Judge Durie personally in that.

It is ungracious and unworthy of ACT that it should launch this attack on the treaty settlement process, which is historically very, very important for this nation. It is hard to overestimate the importance of this process, and the importance of its retaining and deserving the credibility and trust of the public.

Going back to the background of this Bill, I observe that subsection 2(a) of section 4 of the Treaty of Waitangi Act provides that the Chief Judge of the Maori Land Court is a member of the Waitangi Tribunal, and its chairperson. Section 4A(1) provides that the chairperson of the tribunal may from time to time appoint a judge of the Maori Land Court to be the deputy chairperson of the tribunal. The present chairperson of the tribunal, in fact since 1981, is Chief Judge Edward Durie, who is, of course, the Chief Judge of the Maori Land Court. His appointment as a High Court judge has recently been announced, therefore, if the law remains as it is, he will be required to retire from the tribunal purely on the grounds that in his career as a judge he has been promoted to the High Court.

Labour does not want that price to be required. This Bill would provide that a judge or retired judge of the High Court or the Chief Judge of the Maori Land Court may be appointed as both a member of the Waitangi Tribunal and its chairperson for a term of 5 years. The judge would be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs, who would be required to consult the Minister of Justice first.

Debate interrupted.

Sitting suspended from 1 p.m. to 2 p.m.

TREATY OF WAITANGI AMENDMENT BILL

Second Reading

Debate resumed.

Hon. JIM SUTTON (NZ Labour---Aoraki): To recap, I say that the purpose of this Bill is that the Parliament is invited by the Government to facilitate Chief Judge Edward Durie remaining as chair of the Waitangi Tribunal, notwithstanding the fact that he has recently been promoted from being the Chief Judge of the Maori Land Court to being a High Court judge.

Labour favours this move. Labour believes that New Zealand has the greatest respect for Chief Judge Durie. His incumbency in this position has added credibility and value to the tribunal itself and to the settlement process. We wish to recognise this by facilitating his deserved promotion but without depriving New Zealand of the

ongoing opportunity to retain Chief Judge Durie as chair of the Waitangi Tribunal.

That is pretty straightforward. We expected that every member of Parliament would have supported this Bill. Instead, we learn that the ACT party is using this opportunity to launch into a vitriolic attack on the tribunal, on the settlement process, and, by implication, on Chief Judge Durie. We find ACT's tactics to be disgraceful. We wish to dissociate ourselves from it. We want to point out that the argument raised by ACT that there would be a conflict of interest if Chief Judge Durie was, at the one time, a judge of the High Court and chairman of the Waitangi Tribunal is specious---in fact, absurd.

Every judge of this land who from time to time chairs a tribunal or an inquiry of one sort or another could claim to be in the same position. Chief Judge Durie himself could claim to be in the same position by virtue of being Chief Judge of the Maori Land Court and chairman of the Waitangi Tribunal. Any two or three of those institutions named could at various times be asked to pronounce upon the same case or different aspects of the same case. We reject the silly argument of ACT. We reject its disruptive and disgraceful tactics. We think that ACT members should go away and seriously consider their position, be a bit gracious, show a bit of wisdom, pull their heads in, and make themselves scarce.

RANA WAITAI (NZ First---Te Puku o te Whenua): I am particularly proud to be associated with progressing this Bill. Chief Judge Edward Taihakurei Durie is a member of the Rangitane iwi, of which I am proud to say I am also a member. Therefore, he descends from the Kurahaupo waka, one of the great wakas of past history. He comes from an extremely fine and reputable family in the Feilding area that has contributed highly to the progressing of this nation in various fields.

This Bill will enable Chief Judge Durie, when he becomes a member of the High Court, also to retain his chairmanship of the Waitangi Tribunal. That is particularly important to Maoridom at this stage because we have some fairly rocky roads to traverse over the next 5 years.

Trevor Mallard: Yes, probably over the next 12 months.

RANA WAITAI: Indeed, we have. If only for consistency, or if that alone was the reason, that would be a good reason. As it is, Chief Judge Durie has been the chair of that tribunal for some 17 years, and it is very important to us to have that consistency continue. I am particularly pleased to see his ascension to the High Court bench. He is a very respected man and he has given great service in his role in the Maori Land Court. He is only the second person to escape from the clutches of the Maori Land Court. The first was Judge Rota, who was promoted to the District Court bench some 5 years. Otherwise, it appears to be their lot to remain where they are. I am very glad to see Chief Judge Edward Durie, whom I have called Eddie for all these years and will continue to do so, move up in the scheme of things.

There is not a great deal more to say, other than that I am very glad to see this matter progress.

JOE HAWKE (NZ Labour): I am very pleased to rise to speak to the Bill, and to indicate to the House that Labour supports its second reading. It is with special happiness and glee that I also rise to present some comments on the Bill.

This Bill changes the law so that the said Chief Judge Durie can be promoted to the High Court whilst retaining his chairpersonship of the Waitangi Tribunal. I stand to support that, and so does the Labour Opposition.

It is especially ironic that I so stand, because as members well know Chief Judge Durie was the first chairperson of the Waitangi

Tribunal, and the first Waitangi Tribunal hearing was held in Tamaki-makau-rau on the kaupapa of Bastion Point many years ago. It is ironic because Joe Hawke was the first claimant to the Waitangi Tribunal, and the judge through counsel advised Mr Hawke that he would have no ``Hollywoods'' in his tribunals. It is ironic that I stand to support the elevation of that very same person, Chief Judge Durie.

Mark Burton: He's earned his stripes.

JOE HAWKE: He has indeed earned his stripes, as my colleague Mark Burton has just indicated. But I also hear the words of the member of Parliament, Rana Waitai, who is also of the Rangitane tribe. He is especially proud to unite with the Labour Party in supporting the second reading of this Bill.

This law change amends the Treaty of Waitangi Act so that the chairperson of the Waitangi Tribunal may be the Chief Judge of the Maori Land Court, or a High Court judge, or a retired High Court judge. While Chief Judge Durie loses the qualification for the position of being the Chief Judge of the Maori Land Court, he gains the qualification of being a High Court judge. It is pleasing to me to see this materialise.

I say to the House that the issue raised earlier in the debate by my Labour colleague Tariana Turia is also a special concern of mine. As we see Governments willing to complete Waitangi Tribunal issues more speedily, we find when we look around that the elevation of Maori to positions in the judiciary is very slow. I issue a challenge to members of this House that we have to recognise that if we want to complete outstanding Waitangi Tribunal claims we must indeed bring qualified and trained Maori personnel to the judiciary more speedily than we do at present.

I must say I am disappointed with the opposition that ACT has shown to this Bill. I am very disappointed, because we have to move forward and if we cannot move forward then we find that the issues of Maoridom are lapsing behind. This is the way forward, and I believe that ACT members should relent, recommit, and turn round and support this Bill. I challenge them to do that.

There is an uneasy atmosphere in the Maori world today when we do not have a Parliament that listens to and feels the emotion that Maori are under, in waiting for these longstanding claims. I believe that this Bill helps this Parliament to erase the injustices to Maori speedily, and I do stand with the Labour Opposition and with my colleague Rana Waitai in this House to support this Bill.

A party vote was called for on the question, That the Treaty of Waitangi Amendment Bill be now read a second time.

Ayes 112

New Zealand National 44;

Labour 37; New Zealand First 16;

Alliance 12; United New Zealand 1; Independent, Kirton 1; Kopu 1.

Noes 8

ACT New Zealand 8.

Majority for: 104

Bill read a second time, and referred to the Government Administration Committee.

**11 Nov 1998, 45<sup>th</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 573, pp13082-13094**

**Treaty of Waitangi (Final Settlement of Claims) Bill** (Second Reading)

TREATY OF WAITANGI (FINAL SETTLEMENT OF CLAIMS) BILL

Second Reading

Hon. DEREK QUIGLEY (ACT NZ): I move, That the Treaty of Waitangi

(Final Settlement of Claims) Bill be now read a second time. I give notice that I intend asking the House to refer the Bill to the Justice and Law Reform Committee.

This Bill is a relatively simple and straightforward measure, but one with far-reaching implications. If it becomes law, in my view it has the potential to be a watershed in the development of our nation. The Bill gives us the opportunity to move our country from a deadening preoccupation with historic grievances---legitimate as they may be---to a new and higher level of reconciliation between races.

We are a country of diverse cultures. I believe that we all want to know where we are going as a nation, so that we can identify our own place in society and feel comfortable about it. An essential part of this process is to set up a framework for treaty negotiations that has a fair and practical time-frame in which to conclude them, so that, in the words used in a speech by the Minister of Maori Affairs earlier this year, ``we can put all those grievances behind us and get on with building a harmonious and inclusive society.''

However, my concern is that this will not happen on its own, because the current treaty settlement process now has a momentum of its own that has the potential for massive interracial and crossrace disharmony. If members do not believe me, they should ask Sandra Lee how she feels about the latest Ngai Tahu settlement, or ask Shane Jones and John Tamihere about the fairness and durability of the Waitangi Fisheries Commission settlement. And if that has not convinced members, I will read to the House what Kenneth Minogue said earlier this year: ``Every time I come back to New Zealand I am fascinated by the spectacle of the happy country of my childhood, racked by elements of recrimination and resentment.''

Later in the same article, when Minogue referred to the aim of the treaty legislation as a way ``to wipe the slate clean'', he commented: ``Few New Zealanders realise what a dangerous operation this is. The problem is that collective grievances, unlike those of individuals, who die off, have a kind of immortality. An immortal grievance is a permanent pain in the body politic. In the extreme case the pain leads to civil war and fraternal strife.''

We obviously do not want that here. That is why my Bill has two linked objectives: to set a reasonable time-frame in which to conclude, once and for all, claims before the tribunal; and secondly to establish a process to examine major issues that impact on where New Zealand stands as one nation and what needs to be done to achieve the goal of bringing people of all races together under one law without discrimination between any sector of our society.

My Bill nominates the end of this century as the cut-off date for lodging claims with the tribunal. The tribunal would then have a further 5 years in which to research them. And the Crown and claimants would have a further 5 years in which to settle payments. The Bill requires the Crown to act in a timely manner on claims and for the two relevant Maori courts to give priority to these time limits. Obviously, adequate funding is a matter of priority.

All settlements would be full and final. Let me stress this point. There will be no opportunity to reopen settlements reached in good faith by all parties. There will be no relitigation once claims have been determined and finalised. The objective must be to settle legitimate grievances once and for all and get them behind us so we can focus on the real challenges we face as a nation. Let me stress though, that my Bill seeks in no way to deprive people of their legitimate rights. It seeks only to have them settled within a certain time-frame.

The Minister in charge of Treaty of Waitangi Negotiations has been critical of the cut-off date in my Bill. I find his response odd, given his leader's support for a timetable for the settlement of

claims. Less than a year ago the Prime Minister announced that her Government would be ``working to resolve the outstanding Maori grievances by the year 2000''. She confirmed that timetable in this House earlier today. Under my timetable that would still leave a generous 10 years in which to settle minor claims, and a pool of experienced talent to research and progress them.

At this point I want to acknowledge the fine work of the Waitangi Tribunal in the claims settlement process so far. Its input has helped to secure the potential growth and development of particular Maori, and to improve the relationship between them and Pakeha.

However, the most recent Ngai Tahu legislation is the fourth full and final settlement, and not all South Island Maori are agreed on its terms. That is why settlements on their own are not enough, as recent comments made by Shane Jones illustrate. His depressing view was that treaty claims would remain an indelible feature of Kiwi society, because no settlement would be full and final until Maori leaders were able to work together to benefit all Maori. He adds that---I think realistically---``This was unfortunate because continuous claims engendered a defeatist sense of Maori victimhood, which helped no one.''

The second part of my Bill seeks to address this issue by establishing a council of race relations with the task of examining attitudes and the law, with a view to ensuring equality between all races in New Zealand and establishing a consensus on any necessary changes. The Bill contains a tentative definition of the sort of equality we must work towards by defining the term ``equality between all races''. The explanatory note states: ``This is specified to be a situation in which New Zealand is one country with many people united in a single legal system which recognises differences between the races that are essential to secure the adequate development and protection of particular groups and individuals or that provide for members of a minority to be free, in community with other members of that minority, to enjoy their culture, profess and practise their religion, and to use their own language.''

In conclusion, as we move towards the new millennium, it is essential, in my view, that we rethink our approach to race relations. We need new ideas, reconciliation, tolerance of other people's points of view, and, above all, understanding between all sectors of society. One of the most remarkable features of recent years has been the Maori cultural renaissance. We must now match this with a similar surge of progress in education, health, and economic development. As the Minister of Maori Affairs has said: ``We all want the same thing. We all want to be New Zealanders first and foremost'---

Hon. Tau Henare: I didn't say that.

Hon. DEREK QUIGLEY: ---``Our fortunes are inextricably linked.'' That is quoted directly from one of the Minister's speeches.

As I said in moving the second reading of this Bill, it is not a complicated measure, but its implications are far-reaching. They need to be fully and widely debated so that all sections of the community have the opportunity to express their views on them. The eyes of the world are already on our treaty settlement process. Let us make sure it is another success story that we can all feel proud of.

Hon. JIM SUTTON (NZ Labour---Aoraki): Labour will be voting against the Treaty of Waitangi (Final Settlement of Claims) Bill for the reason that it is contrary to the New Zealand principle of fair play. I want, nevertheless, to give some credit to the author of this Bill. He acknowledges that the Waitangi Tribunal claims process has helped secure the growth and development of Maori, and improved reconciliation between Maori and Pakeha. Nevertheless he wants to abandon that process within an unrealistic time-frame because he says

that it is time to shift the focus from past grievances to looking to and planning for the future. He therefore proposes that a line be drawn under the claims processes, and attention be moved to the future of race relations. Well, those are fine words. The problem is that the best way to move the focus from past grievances is to give them proper redress: to deal with them, not to set an arbitrary time-limit in law, after which we are supposed to pretend they did not occur. Secondly, the way to build a better future in these circumstances will be well facilitated by re-resourcing the treaty partner---to the extent that the nation can reasonably afford to do so, and is capable of doing so---by returning the assets of which Maori were illegally deprived.

The member talks about equality between all the races. He has a funny way of showing it, because he proposes that Maori be singled out by having their access to due process denied by law in this instance---nobody else but Maori. I feel that the Bill, if it were to proceed, would be in breach of the New Zealand Bill of Rights Act. Section 27(2) provides that: ``Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.''

Surely, ``or other authority'' by any standard of fairness must include the old Native Land Court and, indeed, those other institutions that were used to deprive Maori of their communally owned land and make it available for unscrupulous acquisition by land-hungry European settlers.

Section 27(3) of the Act provides that every person has the right to bring civil proceedings against the Crown and have those proceedings heard according to law. The Waitangi Tribunal was established so that there was a practical way in which these complaints against the Crown could be proceeded with and heard in an expert way according to law. To remove that right arbitrarily at a certain point in time would at that identical point in time breach that right provided for.

Section 28 states: ``Other rights and freedoms not affected---An existing right or freedom shall not be held to be abrogated or restricted by reason only that the right or freedom is not included in this Bill of Rights or is included only in part.''

That really disposes of any argument that might by narrow interpretation be brought to allege that the New Zealand Bill of Rights Act did not cover these particular rights.

Finally, section 29 provides that the provisions of this Bill of Rights Act apply for the benefit of all legal persons as well as for the benefit of all natural persons. It is certain that a tribe is a legal person, even if not a natural person. So any suggestion that the Bill of Rights Act does not apply in respect of tribal rights must be dismissed.

The member is singling out Maori grievances for denial of access to due process and in that way he is introducing race-based law; something that he himself has said needs to be phased out. He should practise what he preaches and he should abandon this ill-conceived Bill.

There are some 700 claims waiting for settlement. Clearly, they cannot be negotiated fairly in a circumstance where the Crown could say: ``You settle with what we're offering or you'll go to the back of the queue and you'll miss the `Quigley Act' cut-off date.''

That would not allow for fair dealing by the Crown. It would be a totally unfair negotiating advantage that the Crown would hold, and I think if the member had thought about the implications he would have hesitated before he introduced this Bill in this form.



It does take a narrow, one-sided view of the treaty settlement process. There is no evidence that the author has talked to any Maori whanau, hapu, or iwi group, or even individual, regarding the Bill and the specific provisions within it. I shall quote from a Newztel News Agency log of the ACT list member, Donna Awatere Huata---one of the member's colleagues. She said she was ``not in favour of establishing the commission that the member seeks to establish.'' She said: ``I'm not too sure that it is such a good idea, given that we already have so many commissions. I don't think our setting up just another Government-appointed commission that is at the end of the day going to represent the Cabinet people that appoint them---what initiatives or new views they can come up with on the treaty that they will then foist on ordinary people.'' I could not have put it better myself. I agree with that. I am not saying that the member who introduced the Bill has any malicious intent, but it would certainly have a malicious effect if the Bill were to go any further.

I believe that the ACT party does have an unwillingness to accept that because the Treaty of Waitangi acknowledged the rights of Maori, this in turn provided the impetus for injustices to be addressed and properly settled, including proper process that is accepted by both the Crown and by Maori in general. The working of the Waitangi Tribunal is a triumph. All New Zealanders can be proud of the work that it has been doing. It is tackling a type of historic injustice that exists in other countries in the world as well, but I do not think that any other country has come to as effective a way as we have of addressing those grievances.

Of course we have to make progress. There is a terrible delay in the processes of the tribunal and in the processes of settlement, and we must find ways to improve the performance to speed up the process of justice. But that is something that we will do. If it takes a century, the Labour Party will persist because the pursuit of justice is something that should have no time limit.

Hon. NICK SMITH (Minister of Conservation): National will not be supporting the introduction of this Bill. Our approach can be very much summed up in the words: ``right goal, wrong tool''. National does support timely, durable settlements, but this clumsy Bill will achieve neither of those objectives. In fact, it is likely to have exactly the opposite effect. ACT completely misreads Maoridom in believing that holding guns to their heads will somehow deliver quicker settlements. It is like saying to a jury: ``You've got till 3 o'clock to come to your verdict.'', or it is like saying when someone goes to court: ``If your case is not resolved within a month's time, then you'll get nothing.'' Or it is like saying in the process of a difficult industrial negotiation between an employer and a union: ``If you don't make a decision by midnight, it's all off.'' How many times have we seen deadlines like that put in place, and then people have thought about it again afterwards?

This is not to say that National thinks that the time lines in this Bill are wrong. National does believe that having a time line, and having targets for these issues to be resolved, is quite appropriate. What we think is quite wrong is pretending that somehow by putting them in law, it advances the cause, and that is the error of this Bill. Inherent in this Bill is the notion that if Maori do not settle by a particular date, they will get nothing. That is not reasonable. That is not the way in which we will get durable settlements.

No New Zealander is interested in the settlement process unless it is full and final. In his introduction speech Mr Derek Quigley made it very plain that ACT wants the settlements to be full and final. The member went so far as to cite previous attempts in history to try to resolve some of these issues. The sad reality is that the member

is falling into exactly the same traps that previous Parliaments had, and that is trying to impose settlements, trying to set deadlines in legislation, and that is exactly the wrong approach. Artificial deadlines carved in stone will not work. They are a falsehood. If passed and imposed, I will bet that member the best bottle of Nelson wine---and it is pretty good wine---that if we do go down this track, a future Parliament will be undoing those deadlines because of the problems that they involve. So National says: ``Yes, we want progress. Yes, we want to have clear targets. But, no, it is a mistake to legislate for them.''

I do not think that this Bill has a lot to do with trying to get timely and durable settlements. It is my view that this Bill has everything to do with politics and not much to do with getting durable settlements on track. Everybody in this House knows the difficult politics associated with trying to advance treaty settlements. I have to give ACT members credit---they have a damned sight more brains than Pauline Hanson. But I have to suspect that with this Bill they are hunting after a similar constituency. This Bill is designed to itch a sore---

Hon. Derek Quigley: I raise a point of order, Mr Speaker. The member knows perfectly well that that is a gross innuendo. I feel insulted as a result of it, and I would like the member to withdraw and apologise.

The ASSISTANT SPEAKER (Eric Roy): I think that the member has stopped short of making specific implications to which the member has taken offence. But I caution the member that he has sailed particularly close to the wind, and I ask him to desist from that particular line in his speech.

Hon. NICK SMITH: I will make my position very plain. I think that ACT party members have more brains than Pauline Hanson---I will give them that. But I do believe that this Bill has a political objective, and that is for ACT to scratch the sore that is so sensitive with regard to treaty settlements. The treaty settlement process has to this day been kept largely out of the games of party politics, and it is disappointing to see ACT attempting to exploit it with this Bill.

What is particularly ironic in clauses 4 and 5 of this Bill is the proposal to establish a council of race relations. I have heard ACT members up and down New Zealand say that New Zealand has far too many quangos. ``We've got quangos for this and we've got quangos for that.'', they will say, and here they are proposing to establish yet another.

We already have the Human Rights Commission; we already have the Race Relations Conciliator; We already have the Waitangi Tribunal; and for ACT to be proposing with a Bill before the House that somehow by creating some other quango it will advance these difficult issues, in my view is mistaken. They seem to have fallen into that ultimate and Kiwi trap that when they have a difficult issue, the way to solve it is to form a committee, and in that I think they are mistaken.

We have learnt a lot in the last 8 years about treaty settlements and the process of evolving towards the way in which we can get real results. The tribunal does hope to hear all claims by the year 2005 drawing on the research that it has already completed, and it is doing work on streamlining its processes. Five claimant groups are now in negotiations with the Crown, and a further eight claimant groups are at the pre-negotiation stage. This number will increase as the tribunal completes its inquiries.

Incredibly important benchmarks have been achieved by this Government with both the Waikato and the Ngai Tahu settlements. They show that the process does work, and even in the face of incredible odds we are able to achieve those sorts of settlements. The Government is committed to clear targets of trying to have all major

settlements concluded in a timely fashion.

We have learnt much from our experience to date, but if there is anything that we should learn, it is that holding guns to people's heads and setting time lines in legislation is a mistake. The treaty settlement process has to date been kept above party politics, and I make a plea to this House that as we try to progress these issues we keep it that way. This Bill will not help us to achieve timely, or full and final, settlements. Those are National's objectives and that is why we will not be supporting this Bill.

SANDRA LEE (Deputy Leader---The Alliance): In opening I respectfully remind the promoter of the Bill that when he makes reference to the need for Maori now to move into a mode of planning for their future, nobody is more desirous than the tangata whenua themselves to do exactly that. The treaty fatigue referred to by members of the general public is shared far more fulsomely by Maori in this country after 150 years of attempts at litigating settlements to the longstanding grievances that affect them. In fact that has yet to be achieved in no small part, as the mover and promoter of this Bill full well knows, because the Government's approach to treaty settlements is fundamentally flawed. Its cheque-book mentality has shown that recent settlements, far from achieving the goals that they set out to achieve, have resulted in litigation, relitigation, cross-litigation, and further claims and grief because the Government's approach has been one that has been linear and dogmatic. It has systematically and obstinately refused to embrace that which goes to make up our people, including our hapu and those of our people who live in the urban environment.

The Alliance therefore will be voting against this Bill, as well. It believes that the Government has a duty instead to resource adequately the Waitangi Tribunal, and the applicants to it, in order to ensure that the grievances and applications that are made before the tribunal are advanced as quickly and as expediently as possible.

As I said earlier, the Alliance is desirous to see relief to the longstanding grievances, but regrettably this Bill does not achieve that. I have a particular problem with clause 3, which sets a time limit on the receipt of settlement claims. It provides for only a 12-month period, ending in 1999, for all claims to be lodged with the Waitangi Tribunal.

I have to say, if we are not to fear that there are some political nuances to this Bill, that that is actually quite revealing. The Alliance, and my own party that I lead, Mana Motuhake o Aotearoa, remind the Government and ACT that the treaty is not a finite document. So any imposition of a 1-year time-frame---`take your tickets, get on the bus'---is entirely inappropriate because it presupposes that there will not be future breaches, and that there will not be new grievances generated. I remind the promoter of the Bill that that is exactly what has occurred.

As recently as just a couple of weeks ago we saw the wananga of this country take a claim to the Waitangi Tribunal because yet again they have been refused their rightful access to the resource establishment grant that every other polytech in this country enjoys, by virtue of the fact that they---as far as the Ministry of Education, which seems determined to fetter our wananga, is concerned---do not represent a public body, but rather a private institution.

One has to understand that it is an infinite document---an international treaty that is recognised throughout the world. By virtue of that, although the Crown may be confident that it will never ever again create any other grievances by breaching, as a Crown, the Treaty of Waitangi and the undertakings enshrined within it, Maori can have no such confidence given the historical track

record of the last 150 years; and because of that, Maori would be foolish indeed to support any proposition for the abolition of the one forum to which they have access to litigate those difficulties, namely the tribunal itself.

The Bill requires that all inquiries, findings, and recommendations must be concluded by the year 2005. Again I say to the promoter of the Bill that the difficulty with that, although perhaps the object is a noble one, is that nowhere in the Bill---and I understand the constraints of a member's Bill myself---and in the Government policy that the ACT party supports and props up as a minority Government, has there been any advocacy either from ACT or the Government for additional resources to ensure that applicants, the tribunal itself, and those who might want to appear before it, are provided with the necessary additional resources in order to ensure that that time line is adhered to.

So what the promoter is saying is that all applications are to be in in 1 year's time, and by 2005 it is all over bar the shouting. Nowhere is there a prescription or even an advocacy of additional resourcing for the Waitangi Tribunal, which would be absolutely necessary, and has to be part and parcel of any real commitment to adherence to such an onerous time line.

It creates an office that is essentially a re-creation of the Office of the Race Relations Conciliator, and I want to say a little bit about that. I accept that it goes beyond its general terms of reference, but we have a race relations office, and I know it well. It is noticeable by its absence in Christchurch where the skinheads regularly harass Maori, Asian, and other ethnic minorities in the Square. That has been closed, although I understand that the Race Relations Conciliator has a very nice apartment adjacent to the Basin Reserve---I wonder whether he is partial to cricket?

Anyway, returning to the point, we already have one of those offices. They are poorly resourced, but I do believe that it is unnecessary to create another one by virtue of this Bill. Again I remind the House that the treaty itself, and the tribunal's existence, is not about a fundamental issue of race relations in this country. It is actually about an international treaty that has standing at law of equal status to the GATT, and the Multilateral Agreement on Investment if Government ever gets around to signing it, and Maori should well hope that it does not. It is an immigration document. It allows the protection and some rights to the newcomers to these shores who have come in the last 150 years, and enshrines a status of the rights of the original people, namely the tangata whenua. It accords us, the tangata whenua, further rights as British subjects by virtue of the act of grace in allowing others to come here.

If the Government and the promoter of the Bill are in earnest, rather than reinventing a second race relations office, I would challenge them actually to become the staunchest advocates in this House of the establishment by the Government of a treaty education unit in this country. Large numbers of our fellow citizen Pakeha New Zealanders, as any Maori knows, are often ignorant of the historical circumstances that sit behind these longstanding grievances. It will be a wonderful thing in my view---and the Alliance policy states this---if we establish treaty education units so that our fellow citizens could be wised up and educated as to the history that sits behind these very issues that have arisen.

The last thing I want to say in this debate is this. I want to thank the Minister of Maori Affairs---I whack him when I think he gets it wrong---but I suspect that the Government will vote against this in no small part because I see his hand in it. I congratulate him on that if I am right.

The second point that I would like to make to all members in this House is that we have a greater responsibility as political leaders of this country to ensure that the treaty does not become a political football for the sake of electioneering purposes.

TUKOROIRANGI MORGAN (Independent---Te Tai Hauauru): At the heart of this issue is fair play, and fair play means that one does not hold a gun to someone's head and force that party to try to make a deal. In the most simplistic way, this Bill states exactly that.

We all yearn for the day when, whatever our culture, whether we are Maori or non-Maori, we can live our lives with cultural tolerance and understanding. I commend the sponsor of the Bill, because I am reminded that Winston Churchill once said that the future of the empire is the empire of the mind. I commend that member for trying to change attitudes towards the issue of certainty, the issue of full and final settlements in this country, so that we can walk away from historical grievances and can walk together step by step as peoples of this great nation. It is only on that basis that I support the promoter of the Bill, but beyond that the Bill is unfair.

We are talking about the Treaty of Waitangi. We are talking about a treaty that promoted the notion of true partnership. For 158 years Maori people have waited for justice in this country, and for the last 8 years the National Party has begun to walk down that road to justice. I commend the National Party, because it has had the courage and the guts to put its money where its mouth is, to start to rebuild this nation, and to try to engender some tolerance and understanding of Maori, given that we have lived with the pain of injustice and a situation where our grievances have been like a festering sore. If we were to extract the word ``Maori'' from this Bill and to insert the word ``Aboriginal'', then we would have a document that is pretty close to Pauline Hanson's One Nation principles and doctrine.

I absolutely agree that we need a sensible approach to try to rebuild this nation and to understand each other's culture. We all yearn for that. Members of Mauri Pacific yearn for that. That is the reason we have people like the Rev. Ann Batten. We want to see a day in this country when our kids can work together on the basis of cultural understanding. This great nation was founded on the Treaty of Waitangi. The promoter of the Bill is saying: ``Well, let's walk away and forget about that.'' That will not happen.

This is a muddled Bill. It is about trying to say to Maori: ``Hurry up, Maori; if you don't get your act together by the year 2000, you're history.'' In simple terms that is what this Bill states---``If you don't hurry up you're going to miss the boat completely.'' It offers Maori no basis if, for example, the Crown gets wrong the resolution of treaty grievances in the future. Where is the pathway? Where is the basis for some further resolution?

This is how confused the Bill is. First of all, it jumps from addressing bicultural to multicultural issues, and fails on both counts. The Bill attempts to address Treaty of Waitangi grievances, and never once recognises the tangata whenua status of Maori. What does that tell us about the Bill?

Section 6AA(7) in clause 3 states that the Minister of Maori Affairs must report, but the promoter of the Bill fails to understand that treaty settlements are not the responsibility of the Minister of Maori Affairs; they are the responsibility of the Minister in charge of Treaty of Waitangi Negotiations. What does that say about this Bill? Perhaps Mr Quigley was in haste to try to get this Bill through. The Waitangi Tribunal is part of the Department for Courts. It does not come under the ambit of the Minister of Maori Affairs. I ask the member why he insists that the Minister of Maori Affairs report on issues confronted by the Waitangi Tribunal.

What has the ACT party to gain from this Bill? That is a very simplistic question. Is the ACT party after the redneck vote? What does the ACT party have to gain? The explanatory note talks about tolerance and understanding, about a nation trying to come together. I ask the promoter of this Bill what the hidden agenda is. Is it political gain? It must be!

If members look at the detail of the Bill they will see that it characterises what the ACT party stands for. ACT party members do not care about pushing Maori to a particular place and saying to them: ``You've got just 2 years.'' They do not care about that. They want to try to bury this issue once and for all. They want to sprint away from this issue. They do not have the tolerance to allow time to heal. Maori people have been waiting for 157 years for the settlement of their grievances. The ACT party wants to bring them to an end by the year 2000. By the year 2005 the ACT party wants every treaty grievance in this country settled.

Logistically, it is absolutely impossible. There are more than 457 claims before the Waitangi Tribunal. How on earth would the ACT party do that? I say to the promoter of the Bill that despite his good intentions Mauri Pacific will not support the Bill. Kia ora.

JOHN CARTER (Senior Whip---NZ National): I am conscious of the fact that a number of other members are anxious to take a call in this debate, including a member of New Zealand First, a member of Labour, and a member of the National Party. It has also been agreed by the Business Committee that the party that promotes a Bill will have two speakers. So at least four people are likely to seek the call, and it would be normal to give New Zealand First a spot as it has not had a call as yet. Given that the Government has had only one speaker, Labour has had only one speaker, and ACT is yet to have one, given that New Zealand First will get the next call, which is only fair and proper, and given that, as has become the custom, another call will go to the ACT party, which has promoted the Bill, I seek the leave of the House to give two additional 5-minute spots---one to Mr Samuels and one to the Associate Minister in charge of Treaty of Waitangi Negotiations, Georgina te Heuheu.

Mr DEPUTY SPEAKER: Leave is sought for the purpose outlined and requested. Is there any objection?

Hon. Tau Henare: I raise a point of order, Mr Speaker.

Mr DEPUTY SPEAKER: The Minister may seek clarification, but it is not a debating matter. It is a leave or no leave situation. The member may seek clarification if he wishes. He does not.

Leave is sought for the purpose described. Is there any objection? There appears to be none.

Before I call Tutekawa Wyllie could I say gently to the last speaker that it is unwise to refer to the intestinal content or capacity of either members or parties, even though it was done in a positive way, because I am required to rule out those comparisons in a negative way. I would prefer that members did not refer to what might be inside other honourable members or their parties.

TUTEKAWA WYLLIE (NZ First---Te Tai Tonga): Obviously, a Bill of this magnitude deserves some attention, but I will not dwell too long on it. I am particularly interested in some questions that I need to ask of the ACT party, the promoter of this Bill. I am really interested---

Hon. Derek Quigley: It's a member's Bill!

TUTEKAWA WYLLIE: I am really interested in how much consultation the member who has promoted this member's Bill has undertaken with Maoridom about it. It is an important part of our role as members of Parliament to consult those people upon whom a Bill may have some impact. I am particularly interested in how much consultation has gone into the development of this Bill, especially given that Mr

Quigley has access to important Maori networks that would be able to give him some advice free of charge---access through some of his fellow members of his party, including Mrs Awatere Huata. Obviously, a member who promotes something as significant as this Bill would want to take the time to ask the people upon whom it would impact what their views were.

But, having said that, I am interested in, and heartened by, the stance of the National Party minority Government and the new party, Mauri Pacific. It needs to be stated for the record that National's position is particularly gratifying given that probably only two parties in this Parliament are responsible for delivering on treaty settlements. One of them is the National Party, which has delivered two significant treaty settlements. New Zealand First and my former colleagues in Mauri Pacific have delivered one settlement. For the rest of the parties in this House the score is nought.

Hon. Tau Henare: What was the score again?

TUTEKAWA WYLLIE: I will repeat it. For the other parties in this Parliament, the score for their delivery of treaty settlements to iwi is nought.

Mr Dover Samuels: Who established the Waitangi Tribunal?

TUTEKAWA WYLLIE: The member has brought up an important point. He has pointed out that the Labour Party set up the process of how we might get there, but it has not actually been there to deliver the final result.

I do not want to go on too much about that. I think there are some significant issues. Mr Quigley's Bill says we ought to bring some sort of certainty to this issue, and I could not agree more with that.

I think there is a question of resources, as my former colleague the Hon. Tau Henare has mentioned, because there are three stages in getting to a final treaty settlement. First of all, there is the need to present a case and the research that is required in doing that. Secondly, there is the need to negotiate a settlement, and as the Ngai Tahu settlement has pointed out, that is often a long and drawn out process. It took 6 to 7 years. Then there is the third stage, which is to provide the appropriate legislation. So when we are talking about settling treaty settlements, we are talking about a three-pronged process that needs resources at every level. It cannot be done overnight, and, in all honesty, I certainly do not think it can be done in the time-frame that the member is submitting.

What is significant, though, is that all future Governments need to take cognisance of the fact that delivery will be incumbent on them, so they will have to provide the resources. At the next election, I will be interested in what sorts of policies all the parties, including the ACT party, the Labour Party, and the new Mauri Pacific party, come up with to deliver resources and workable processes to ensure that we get through phases two and three, not just phase one. Not only do we need to do the research and present the case but, secondly, we need to provide the resources that are required to deliver a negotiated settlement, and, thirdly, we need to provide the legislation.

I say to members and to the member who has presented this Bill that it is not an easy task to reach a final settlement. As the Ngai Tahu settlement has pointed out, the Crown's ability to deliver whenua is a very important part of that process. The Ngai Tahu settlement has pointed out that the last thing that Maori are considering as an important part of the package is the issue of money. It is actually the return of whenua, the return of the mana of the people to them, that is the most important part.

I commend the member from the ACT party for putting this Bill before Parliament for it to debate. I commend the member for raising

the issue of bringing certainty and some sort of finality to the settlement of treaty claims, which all future Parliaments and Governments must contemplate. But I would say that if it had consulted properly with the groups upon which this Bill would impact most significantly, they would have told it that the time-frame was not appropriate and not achievable. Therefore, I think the Bill, despite its merits, has raised more questions than answers. For that we as a Parliament ought to be grateful.

DONNA AWATERE HUATA (ACT NZ): The honourable member Tukoroirangi Morgan raised the issue of the length of time that Maori have waited for treaty settlements---158 years. It has been too long and too painful a journey. It is time that we looked at the provisions of this Bill, whose intention is to kick that process forward. Since we began the treaty process in 1975, 23 years ago, it has dragged on for far too long.

How well have we done? The Waitangi Tribunal informed me this morning that there have been 720 claims before it. How many of those claims have been settled finally? Thirty-one, but there is a catch. Only five of those 31 have actually been settled fully. The others are all partial settlements. There are 26 partial settlements and five full and final settlements out of 720 claims in 23 years. We have waited 158 years, and I believe that Maoridom should not have to wait a single year or a single moment longer.

Let us look at this tribunal. It was established in 1975. The tribunal cannot even tell me what the budget was. I said: ``Would \$20,000 be making too grandiose a claim?``, and I was told it would not be half of that. It said: ``We do know that by 1985 it had risen to \$32,000.`` By that date it had \$32,000 to hear 145 years of claims! Since then it has crept inexorably upwards to the point now where it is just under \$5 million.

Let me bring the attention of the House to the fact that the APEC conference next year will cost us \$50 million. It is one big election campaign for the National Party---\$50 million on the APEC conference.

Tukoroirangi Morgan: How much?

DONNA AWATERE HUATA: It will cost \$50 million, and the Government will not vote for a Bill that says that this tribunal needs to be resourced to the point where it can hear all the claims by the year 2005 and settle them by the year 2010. I understand that my colleague down here used the word ``hypocrite``.

Hon. John Luxton: It's unparliamentary.

DONNA AWATERE HUATA: It may have been unparliamentary, but I did hear someone use that word. The Prime Minister herself, before December, said that she wanted the treaty claims settled by the year 2000, which is only a year away. The tribunal itself in its own document on the Internet, which I accessed today, talks about the strategic issues that it faces. It states: ``The Government has as its strategic result area the goal of making significant progress towards the negotiation of fair and affordable settlements.`` The tribunal then states: ``Subsequent refinements saw this goal defined as the''---and I am quoting from the tribunal's Internet site---``resolving of all major claims by the year 2000.`` The mover of this Bill might be interested to hear what the tribunal itself says. It states: ``Our plan is designed to enable the Waitangi Tribunal to assist in this goal and in the resolution of all historical claims by the year 2005.`` Mr Quigley might be interested to know that that is 5 years earlier than he is proposing in this Bill.

An Hon. Member: No!

DONNA AWATERE HUATA: It is 5 years earlier. Yet we heard the National member the Minister of Conservation say that National will not be supporting this Bill, because one cannot legislate a time



line. Do members know what that means? It means that the Government will not give the tribunal the funds and the resources it needs so that it can get on with the job. National would rather spend \$50 million on one big election bash-up next year than put \$50 million into the tribunal, let it get on with the job, and let the nation heal.

One of the important features of this Bill is that all the claims shall be heard by the year 2005---and as I have mentioned, we have 720 claims sitting there. They will have to be reported by the year 2005. That is a very important feature of this Bill, simply because there are tribes that have had all their evidence heard. I am thinking of the tribes that brought the Mohaka claim. The report came out in 1992, 6 years ago. They have not been able to get a meeting with the Minister in charge of Treaty of Waitangi Negotiations in 6 years. All of their claim is under \$1 million. Gravel is still being taken out of the Mohaka River to this very day. Yet they cannot even get an appointment with the Minister. This Bill would cut out all that nonsense and all the political issues, which, I am afraid to say, are concerned with who one knows and who one is, rather than looking at where justice needs to be held for the little people.

I have to chasten the member who has moved this Bill. I am sorry that he did not include in it the provision that the Government must deal with hapu. We have had enough of these tribal bureaucracies tap dancing over the rights of the little people. I chasten the member who brought in this Bill for not including that provision. I am sure that if it had been there the Alliance and Mauri Pacific would have supported it, and quite rightly.

I make my last point. I note in the parliamentary record that National voted in favour of Laila Harre's Paid Parental Leave Bill, a Bill that is a further tax on small businesses. What message is National giving to people taking responsibility for themselves? It can do that, yet it cannot send this Bill to the select committee. In spite of what the Prime Minister wants, which is to settle these matters by the year 2000, in spite of what the tribunal itself says is its own goal of settling these claims by the year 2005, the Government will not send this Bill to the select committee where it can be dealt with. I quote a saying from Tamaterangi: ``M~a te huruhuru ka rere ai te manu.'''---without feathers a bird cannot fly.

Hon. GEORGINA TE HEUHEU (Associate Minister in charge of Treaty of Waitangi Negotiations): The Bill promoted by Mr Quigley does nothing to assist the final settlement of treaty claims. In my view it has the capacity to frustrate the treaty process. This would not be in the best interests of New Zealand or New Zealanders.

The Bill imposes time-limits that would require all claims to be lodged with the Waitangi Tribunal by 31 December 1999, to be heard by the tribunal by 2005, and to be settled with the Crown by 2010. The promoter of the Bill said that this was simple and straightforward, but I believe that in his saying that he gives an incorrect impression to New Zealanders.

This process is neither simple nor straightforward. If it was, we would have zipped through it long ago. Those of us who have been involved in this process for a long number of years now, know just how complex the process is. A complex process does not do well if arbitrary time-limits are imposed. Such time limits would serve only to damage the relationship between Maori and Crown, and would also place an unrealistic and impractical burden on claimants, on the Waitangi Tribunal, and on the Crown itself.

I would like to speak for a moment on those two matters. The Crown-Maori relationship is one of the key aspects of our constitutional arrangements. In recent years a major focus of this

relationship has been the Government commitment to the fair and equitable settlement of treaty claims. While the claims settlement process is but one facet of that relationship, it is extremely significant, and that is why it takes a significant proportion of the Government's time. If the Government on behalf of the Crown can resolve claims honourably, then past injustices can be put behind us, and Crown-Maori relationships can move towards a more positive future.

It is therefore important to allow historical grievances to be heard, to be brought to their natural conclusion, and not to have any imposed time-limits set on them. On the issue of time-limits, it is interesting that the previous speaker made reference to the tribunal and what it was trying to do. Even if we were to pour more financial resources into the process, that would not help the situation. The reality is that there are human constraints as well on ensuring that this process is done in a timely and appropriate manner.

Such a large part of the underpinning of settlements is about the efficacy of the historical research that underpins the tribunal's findings. In this country we are short of first-class historical researchers. They are all used up, and anything that suggests that suddenly we can address that constraint and make quicker progress is not being fair.

Quite simply, it is in the interests of all New Zealanders that the process be allowed to run its course, rather than impositions being put on it. Maori want an end to the process as much as anyone else does. New Zealanders have demonstrated by the patience they have shown that they want these matters resolved in a fair, just, and honourable way. That is the commitment that this Government makes. That is the only way we will ensure that durable and lasting settlements are achieved. In my view, any activity that is conducted under a feeling of duress sets up the potential in the future for a finding that settlements have not been full or final. That would be a disaster.

The National-led Government understands this, and that is why we have moved the process in a way that ensures that Maori, the Waitangi Tribunal, and New Zealanders by and large will come with us. It is important for the future of our country that the process runs its course. To push to deadlines is unlikely to be constructive, and a constructive process is what this Government has been about for the last 8 years. We know a lot more about the process than we did 8 years ago. Statements about when we would like to finish are helpful, but time-limits are not. We vote the Bill down.

Mr DOVER SAMUELS (NZ Labour): Te mea tuatahi m~aku ki a t~atau e whakawhitiwhiti k~orero nei m~o t~enei Pire, t~enei Pire i wh~anau mai i a H~atana. N~a te mea hoki kua pupuritia te p~u ki mua o te iwi M~aori.

[The first thing for me to say as we debate this Bill, is that this Bill was born from Satan. That is because the gun is being held before the M~aori people.]

I am always enthusiastic when it comes to Maori issues before the House, in that people seem to get all fired up. We have just heard an ACT member condemn the Government in terms of Government expenditure of \$50 million on APEC. I reflect that the reality is that her party supports the Government and props it up on a great range of issues.

I want to examine the agenda of this Bill. I commend Derek Quigley. In terms of the wairua and the presentation of this Bill, I commend him for putting all his cards on the table. When it comes to issues like this, that is what Maoridom wants. It wants all the cards put on the table---as long as there are not five jokers in the pack of cards, but only one.

Maori people wish to have these claims resolved. There is not one Maori in this country who does not want to have these claims resolved. Members should read my lips. There is not one Maori in this country who does not wish to have those claims resolved. I say that loudly and clearly so that honourable members on the other side of the House, and the honourable member who advocates this Bill, hear this loudly and clearly. But it has to be resolved in a way that is fair, just, and will endure.

I take on board what was said earlier on by Donna Awatere Huata when she talked about the tribunal and lack of resources. I support what she said. Members may remember that last year the wheels of the tribunal fell off. The tribunal reported to this House that it did not have the resources to be able to process the---

Hon. Ken Shirley: I raise a point of order, Mr Speaker. For many decades this House had as its Standing Orders that when a member stood to take a call he or she was to be ``uncovered''. What that meant was that a person did not wear a hat.

Mr DEPUTY SPEAKER: The member will please resume his seat. That Standing Order no longer applies. I say to Mr Shirley to please not interrupt speakers unnecessarily.

Mr DOVER SAMUELS: Thank you, Mr Speaker. I noticed earlier on that a Government member stood and asked questions with her hat on, and I thank you for not discriminating against me wearing my potae.

I come back to the issue I have raised---namely, the relevant comments made by the honourable member Donna Awatere Huata about the resourcing of the tribunal. That is what it is all about. If the Government can come up with some satisfactory appropriation for the tribunal---that is, if it can increase the personnel and the funding to the tribunal---then perhaps there may be some integrity in this Bill.

RON MARK (NZ First): I seek the leave of the House for one more short 3-minute speech from myself in the closing of this Bill.

Mr SPEAKER: Leave is sought for one further 3-minute speech. Is there any objection to that course being followed? There appears to be none.

Sitting suspended from 6 p.m. to 7.30 p.m.

RON MARK (NZ First): Having just come from a New Zealand First caucus meeting, which has confirmed the position I am going to announce here, I can tell the House that New Zealand First will support the passage of this Bill through to a select committee hearing. But I do say that that does not necessarily mean in any way, shape, or form that New Zealand First lends unequivocal support to the Bill. It is quite clear that there are problems with the Bill, and that the time-frame that has been stipulated is totally unrealistic, but let it not be said that New Zealand First is an unreasonable party, that it does not listen to constructive debate and comment. And let me say that I do find it a little sad that some of the parties in this House are not able to do the same.

A number of speakers have stood before and spoken on various aspects of this Bill. The Hon. Georgina te Heuhehu did say that one of the issues of concern was the shortage of historians in New Zealand who can assist iwi to put their claims together. We know that that is a problem. What is also a concern to some of us is that as the years go by, and this year is probably an exceptional year in this respect, we do lose more and more of our kaumatua, our kuia, our older people who are able to provide us with first-hand knowledge and information of their experience over the past decades, even hundreds of years, of the issues that have been facing their people in relation to specific claims.

We would like to see an end to the treaty grievances process. We

would like to see a time line ourselves, to which Governments signed up--and it would not matter whether it was a National coalition Government or a Labour coalition Government or a New Zealand First Government in its own right---that would achieve that. But there needs to be a time-frame set down. Hand in hand with that, there needs to be proper allocation of resources to see the job done. This debate in select committee would provide such an opportunity.

A party vote was called for on the question, That the Treaty of Waitangi (Final Settlement of Claims) Bill be now read a second time.

Ayes 9

ACT New Zealand 8;  
United New Zealand 1.

Noes 111

New Zealand National 44;	Independents:	Henare,	Morgan,
Labour 37;	Batten,	Kirton,	Morris,
Alliance 12;	Delamere,	Kopu,	Waitai.
New Zealand First 8;	Elder,	McCardle,	

Majority against: 102  
Motion negatived.

**8 Dec 1998, 45<sup>th</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 574, pp13989-13999**

**Treaty of Waitangi Amendment Bill** (Report of Government Administration Committee on Bill)

TREATY OF WAITANGI AMENDMENT BILL

Consideration of Report of Government Administration Committee

Rt Hon. D A M GRAHAM (Minister in charge of Treaty of Waitangi Negotiations), on behalf of the Minister of Maori Affairs: I move, That the House take note of the report of the Government Administration Committee on the Treaty of Waitangi Amendment Bill. This is a short Bill, but an important one. It has come about because it was decided that the Chief Judge of the Maori Land Court, who contemporaneously holds office as Chairperson of the Waitangi Tribunal, had achieved such esteem in the eyes of the judiciary and the law profession that he would be invited to accept, and did accept, appointment as a High Court judge. This Bill therefore changes the Treaty of Waitangi Act to provide that the Chairperson of the Waitangi Tribunal can be either the Chief Judge of the Maori Land Court---as the law provides at present---a High Court judge, or a retired High Court judge. It is as simple as that.

The select committee has referred the Bill back to the House and recommends, by majority, that it be passed without amendment. I understand that the minority view was that there is a political consideration in the matters concerning the Waitangi Tribunal, and that therefore it may not be appropriate to have a judicial officer---

Judy Keall: Maybe that's not debatable at all.

Rt Hon. D A M GRAHAM: Constitutionally, I am told. Mrs Schnauer can explain it herself. I simply say that I do not agree with that. I think that the appointment of Justice Durie has been very well received indeed, and I am more than confident that he can act as a judge of the High Court and at the same time as Chairperson of the Waitangi Tribunal---a position he has now held for many years. He has been a distinguished New Zealander in fulfilling that role.

This Bill enables Justice Durie to resign as Chief Judge of the Maori Land Court, but as a judge of the High Court he will be able to continue to serve on the Waitangi Tribunal as its chairperson. In my view he is invaluable in that role. I would be very reluctant to see him move off that position at this critical time as we work our way through the Treaty of Waitangi claims. It is his intention, and it is agreed to by the Chief Justice of New Zealand, that he will apply

approximately 50 percent of his time to Waitangi Tribunal matters and about 50 percent of his time to sitting as a High Court judge. He is an outstanding jurist, as I am sure we all agree, and this seems to be the way to enable him to fulfil both functions.

I hope that the House will support the Bill. I acknowledge that there is no suggestion by anybody that Justice Durie is other than a distinguished jurist who ought to be on the High Court bench. The argument really, if there is one, is constitutionally whether he should hold another office. I certainly admit that it is most unusual for a High Court judge to hold any other office at all, but this is an exceptional case. In my view it would be unfair if the House thought he ought to remain as chairperson of the tribunal, and be prevented from taking higher office as a High Court judge, simply for that reason. Therefore, it seems justified to make an exception, and I urge the support of the House for the Bill.

Hon. PHIL GOFF (NZ Labour---New Lynn): The Labour Opposition will be supporting the passage of this Bill, although I would like to join my colleague the Rt Hon. Jonathan Hunt in saying that at this time of the day, 2.15 p.m., normally the House would be enjoying a question period, which is vital in any constitutional democracy in order to hold the Government to account.

As the Minister has said, this is not a vitally important Bill. I thought he might have touched upon the fact that we are discussing the Bill under urgency, when the Government should be fronting up to the Opposition and to the country to explain why it is making such a mess of running the country. As far as I am concerned, it is quite inappropriate for the right to question time to be denied to the country and to the Opposition when the Government has so much to answer for. Just in my own portfolio area for example, the report of the Manawatu Prison suicide should be raised by questions in the House. We do not have that opportunity, and I object to the fact that the Minister of Corrections is not standing up here to answer why his department so badly let down the family of the 16-year-old boy who killed himself.

I now turn to the Bill. This Bill was introduced on 6 August. It then went to the Government Administration Committee, which was a curious choice. Normally it might be expected that a Treaty of Waitangi Amendment Bill would go either to the Maori Affairs Committee or to the Justice and Law Reform Committee in so far as it relates to the appointment of a judge and an appointment to a quasi-judicial body. The Minister did not touch on that point. Nevertheless, the Bill went to the Government Administration Committee, which heard submissions on it. There were not a great many submissions. There was a report from Te Puni Kokiri, the Ministry of Maori Development, and there was a submission from the New Zealand Law Society---I want to come back to that submission in a moment, because it was a substantive submission. There was also a submission from a Mr Jim Holdom, who I thought made an interesting point with regard to the nature of the person who should be appointed as chair of the Waitangi Tribunal.

The select committee did not spend a lot of time examining the Bill. In fact, if I refer to its report, which is a 2-page report, it spent a total of 27 minutes considering the Bill and 20 minutes hearing evidence, in addition to the comment that came from Te Puni Kokiri.

The reason for the legislation is reasonably straightforward. It is to allow the then Chief Judge of the Maori Land Court, Eddie Durie, to be elevated to the High Court without his expertise and abilities being lost from the Waitangi Tribunal at a critical point in time for that body. I am sympathetic to the intent of the Minister in passing the legislation, although I have to say it is with some

reluctance that I support legislation that is being altered because of an individual. Generally, we write legislation for wider purposes than that. The Minister has told the House that in this case the exceptional abilities of the individual justify altering the legislation to allow him to remain as chairman of the Waitangi Tribunal, and I guess that viewpoint would be supported by most people in the legal fraternity. It is certainly supported by the Law Society, which, on balance, decided to support this legislation although it raised some concerns as to its constitutional propriety---a matter that the ACT party will raise in the House today. However, I have to say that the Law Society's concerns were not such that it was led to oppose this legislation. In fact, there was no strongly opposing submission in respect of the Treaty of Waitangi Amendment Bill.

I want to refer to Chief Judge Eddie Durie, because he is the focal point of the legislation. I think that he is an exceptional individual. Since 1981 he has been chairperson of the tribunal and the Chief Judge of the Maori Land Court. He was one of the youngest judges ever appointed to the Maori Land Court, at age 34, which is a reflection of his abilities.

I do not think it would be challenged if it was said that he is respected by his judicial colleagues, and certainly the appointment of Eddie Durie to the High Court has been universally welcomed, because he will bring a new perspective and a new set of abilities to the position. That is the reason he is properly appointed to the High Court. The fact that he is also the first Maori to be appointed to the High Court ought to be celebrated. But I reiterate the point that he was appointed not because he is a Maori but because of the particular abilities and skills he has that justify that appointment.

He has considerable expertise in the areas that are covered by his current position as the head of the Waitangi Tribunal. He has overseen the land claim reports, including the reports on the Manukau Harbour, the Te Atiawa claim, Motunui, and the Muriwhenua fisheries claims, and he has been the chairperson of the tribunal throughout the period of the Government's settlement path of Treaty of Waitangi issues since 1990. It is widely accepted that Eddie Durie is the country's foremost legal authority on Maori customs and their place in the laws of the land. Those are the sorts of considerations that led to the alteration of the legislation to enable him to continue to spend at least half of his time on the tribunal through this period when the Treaty of Waitangi claim process is being worked through. He will spend the other half of his time at the High Court.

I guess another reason that it is appropriate to change the legislation in recognition of his ability is the fact that he has devoted so much of his life and so much effort to achieving the promise of partnership between Maori and non-Maori as set out in the treaty. Eddie Durie is a person who moves easily in both cultures---Maori and Pakeha---and it is worth remembering that he has often stressed that the treaty is as much about confirming the place of Pakeha in New Zealand as it is about Maori rights.

One of the things I have admired about the way in which he conducts the tribunal and the Maori Land Court is that he does not tolerate rhetoric in his court room. He is interested in the facts. He is interested in resolving a dispute in the interests of justice. He is not a person who tolerates empty rhetoric; he looks for a solution.

I mentioned before that Eddie Durie was appointed to the Maori Land Court in 1974. I think that he was the first Maori person to be appointed to that body, and he has been Chief Judge of the Maori Land Court since 1981 and chair of the Waitangi Tribunal over the same period. He has the advantage of a bicultural approach, which is the

product of his upbringing and his experience in both communities.

The Law Society's submission expresses a reservation on constitutional grounds at the consequences of permitting the same person to be the Chairperson of the Waitangi Tribunal and also a judge of the High Court of New Zealand. Having said that, the Law Society then makes the point that it accepts that circumstances may arise in which it will enhance the mana of both institutions to appoint a judicial officer, who is a High Court judge, also to be Chairperson of the Waitangi Tribunal, or vice versa. The Law Society makes the point that Eddie Durie is such a compelling candidate for High Court office that that outweighs the constitutional concern. The Law Society's viewpoint on this issue is very clear: it does not support the ACT position of opposing the Bill, although it recognises that there is an issue---albeit, some would say, an esoteric issue---involved with that appointment. The conclusion of the Law Society's submission is that on balance it accepts that the immediate circumstances for promoting this amendment are compelling. The society does ask, however, that consideration be given to any mechanism that might minimise the prospect of conflict between the two roles, and I wonder whether the Minister has given any particular consideration to that fact.

The final point that I want to make is whether the Minister has given consideration to the point made in the submission by Jim Holdom, which is that any appointee to the chair of the Waitangi Tribunal should have an understanding of tikanga Maori and a wide knowledge of the history of the clashes of cultures in this country, and that the person be an appropriate appointment to that body. No such criteria are set out in the Act.

Hon. CLEM SIMICH (Minister of Police): The Treaty of Waitangi Amendment Bill was referred to the Government Administration Committee in late July, and that committee was pleased to have the Bill referred to it. The committee considered the Bill, called for submissions, and dealt with it in a timely way.

Chief Judge Edward Durie has been Chairperson of the Waitangi Tribunal for quite a number of years. It was desirable that he accept office in the High Court, but in doing that he would have been prevented from continuing to chair the Waitangi Tribunal. There is no way that anyone wanted to lose the judge from that position, so this amendment Bill was required.

There were only two submissions on the Bill. One was from the Law Society, and Phil Goff has covered that issue. No one was against what was being proposed in this Bill. The Law Society pointed out what was well known to all members of the House in respect of the appointment of the Chairperson of the Waitangi Commission to the High Court, but the society did not want that issue in any way to affect the appointment. The Law Society pointed out that the House would need to give consideration to that matter at a later date.

Justice Durie is highly respected. It is right that he was appointed a High Court judge. It is necessary that he remain as Chairperson of the Waitangi Tribunal. The committee was pleased for this matter to be dealt with and brought back to the House.

Hon. JIM SUTTON (NZ Labour---Aoraki): Labour supports this Bill, as my colleague Phil Goff has already said. I want just briefly to explore the argument raised by the Law Society about the appropriateness of a High Court judge also holding the position of Chairperson of the Waitangi Tribunal.

As I understand it, the Law Society thinks there could be a conflict of interest. It thinks that if a High Court judge is chairman of the tribunal, then the High Court might be reluctant to

rule against a decision or recommendation of the tribunal, because it would not want to offend in some way a fellow High Court judge. I think that is pretty precious. It is unlikely that the same High Court judge who is also chairman of the tribunal would, as a High Court judge, form the court of appeal, if one likes, against his own decision. That would not happen.

It is not a unique or unprecedented thing for one High Court judge to sit in judgment, so to speak, on the work of another High Court judge. As I understand it, High Court judges are quite frequently seconded up to the Court of Appeal to sit on the Court of Appeal bench. That is where Court of Appeal judges come from; they have all been High Court judges before coming Court of Appeal judges, and they are bound to have close working relationships with each other. That does not stop them from exercising their judgment in an unbiased way. I think this measure just shifts the line up a step. There has always been the possibility of that sort of concern.

The Waitangi Tribunal operates on that fuzzy boundary, or overlap, between politics and the law. There is no doubt about that. To be a good Chairperson of the Waitangi Tribunal would require considerable skills, not only in the law but also in politics. Frankly, the solutions arrived at through the tribunal process have to stand up legally and they have to stand up politically. If they cannot stand up in both those ways, they will not endure. So it is important that someone of the highest calibre is in that position. We are fortunate at the moment to have Justice Durie, who enjoys the confidence of all and sundry in his position as Chairperson of the Waitangi Tribunal. He certainly deserves the promotion to a judge of the High Court.

Far from this being a situation that is relevant only to Chief Judge Durie, I think it is a good move to legislate in a general way, because Chief Judge Durie is not immortal. He might want to go sheep farming or do something different, and then we would need a new Chairperson of the Waitangi Tribunal. If we have to choose the most suitable person from a field that contains not just the Chief Judge of the Maori Land Court but also the judges of the High Court, then I say we have a better chance of getting another very high calibre person who is suitable. People with that range of skills do not grow on trees; even ACT will probably agree with that. These will not be easy boots to fill when the time comes. I think we will need to have the playing field tilted in our favour, and I think we do that a little by broadening the choice of individuals for that position.

Yes, it is probably true that Chief Judge Durie is uniquely suited for that position at this point in time, but I agree with the Law Society that it is not particularly appropriate to legislate for the circumstances of one individual. But I disagree with the society in that I do not think Parliament is actually doing that in this case. I think this measure is a general provision that will serve the country well in the future.

Hon. GEORGINA TE HEUHEU (Associate Minister in charge of Treaty of Waitangi Negotiations): I am sure there is one person who will be very pleased when this legislation is passed, and that is Chief Judge Durie himself. Although he is doing the work of only the High Court and the Waitangi Tribunal, none the less he still holds the position of Chief Judge of the Maori Land Court. He would be taking that seriously, and this legislation will release him from that obligation.

Mr Goff is right in that, on the face of it, we are making these changes to accommodate a particular person. As unique as Chief Judge Durie is, I think there are two underlying principles that are probably even more important than the fact that we now have a person of his calibre and standing whom we can take to the High Court but



can leave as Chairperson of the Waitangi Tribunal.

The first principle is the recognition, I think, that the expertise required to oversee the work of the Waitangi Tribunal is also expertise that should be located on the bench of the High Court. Fortunately we have a person with that expertise at the moment, but the principle is that that knowledge is as important to the work of the Waitangi Tribunal as it is to the High Court.

The other thing that might be seen as an underlying principle is the fact that this legislation gives credence to the importance of the Waitangi Tribunal process, and that is absolutely the way it should be. The whole responsibility of that work has been critical to the development of treaty jurisprudence in the last 10 to 15 years, and so much of it started from the tribunal. It is high time that work was recognised in a way that says it is important. We now recognise that importance by saying that the Chairperson of the Waitangi Tribunal must have these other attributes as well.

So while it is indeed a pleasure to recognise that the legislation is in a sense initiated by the fact that we have Chief Judge Durie, a leading constitutional lawyer, amongst our jurists, nevertheless there are some underlying principles, I think, that are more important and will actually endure beyond the individual.

Mr DOVER SAMUELS (NZ Labour): A, te mea tuatahi m~aku he t~u atu ana ki te mihi ki a Eddie Durie m~o t~enei h~onore kua uwhia ki runga i a ia, ki te tautoko hoki i te Pire, i te ture hei whakamana i tana t~uranga o te K~oti Matua puta noa te motu o Aotearoa. N~o reira e mihi atu ana ki a ia.

[Indeed, the first thing for me in standing up is to congratulate Eddie Durie on this honour that has been bestowed upon him, and also to stand in support of the Bill, the law that makes official his position with the New Zealand High Court. Therefore I congratulate him.]

First of all I would like to express my concern that we have not taken the opportunity to have question time this afternoon. I intended to question the Minister of Maori Affairs on a number of issues pertaining to our people, but the position of the Government is to proceed with this legislation, which I believe needs to be supported.

I endorse also the comments of my colleague the Hon. Phil Goff in his very comprehensive contribution to the process and establishment of this Bill.

It is indeed interesting that when I asked for information about this Bill I was referred to the Government Administration Committee. I thought about it for a little while, and I thought: ``Well, thank God it didn't go to the Maori Affairs Committee, because we would probably have been accused of being biased in terms of the decision to appoint the Chairperson of the Waitangi Tribunal as a High Court judge.'' The House will remember all the paranoia we went through with regard to the Ngai Tahu Claims Settlement Bill. All sorts of statements were made in terms of the appropriateness of the Maori Affairs Committee hearing that Bill.

I pay tribute to Eddie Durie, and I think this House will support me. I am confident that not only this House but the whole of Maoridom believes that he is indeed a person who fits well the role of High Court judge. He is a Maori leader, and an unusual person of humility, tolerance, and great wisdom. I know that colleagues and Ministers on both sides of the House have had long personal relationships with Eddie Durie. He has the ability to reconcile various different cultural perspectives on a wide range of issues. I know that a number of members of Parliament, Ministers, and probably even the Speaker of the House will agree that Eddie Durie certainly has these qualifications.

He is the type of person who will sit well on the bench in terms of bringing to the highest court of our land a different perspective, and not only that of a lawyer---we get a lot of perspectives from bush lawyers when we start to argue about issues relating to Maori land. When we talk about a legal person doing his or her apprenticeship, let me inform the House that if one gets one's degree by being involved in debate and argument in the Maori Land Court, then I certainly believe that one has served an apprenticeship to be appointed as a High Court judge. Perhaps further on down the track we will see our esteemed leader and judge being appointed to the Privy Council, and perhaps then we will see a lot more Maori involved in the judiciary being appointed to these positions.

Eddie Durie has been a Maori Land Court judge for 20 years, and I think he has done his apprenticeship very, very well. He has not been subject to criticism by his own people, and I think members would recognise that a Maori Land Court judge presiding over issues to do with Maori land would cop a lot of flak from both sides. It does not matter what part of the whanau one supports; if one is a judge and makes a decision in favour of the wishes of one side of the whanau, one cops flak from the other side of the whanau.

I want to share the experience I have had of this person. Indeed, I pay tribute to Eddie Durie because he brings special qualities to the bench. I say to the members from ACT that if they are concerned about some constitutional conflict in terms of the dual role, I want to put their minds at rest. This person is of extremely high calibre. I know that this person has the highest integrity. He is a person who will not be involved in any proceedings if there is an inference of a conflict of interest. Anyway, I would assume that the rules of the court---and I think this issue has been raised by my colleague Jim Sutton---would prohibit any type of conflict of interest in terms of High Court proceedings and tribunal proceedings.

At the same time I acknowledge that judges of the High Court do sit on Court of Appeal proceedings. So whilst that issue has been raised---and it has been raised by the Law Society---I think that in the case of Eddie Durie he will bring a positive contribution, not one of conflict, because in many instances the experience that someone like Eddie Durie has can be measured only in a very positive way in terms of the way that he presides over a number of proceedings. I say to ACT and particularly to its member Patricia Schnauer that if she looked in depth at the concern that has been raised, and realised the quality and the integrity of the person we are talking about, she would realise it does not really apply.

I hope other members of the House---particularly the member from ACT---join me in supporting this Bill and seeing it proceed through the House, whilst acknowledging that Eddie Durie is already sitting on the High Court bench. Kia ora tatou.

PATRICIA SCHNAUER (ACT NZ): At the outset let me thank the previous speaker for his comments, which I will certainly take on board. The ACT caucus spoke against this Bill at the time of the second reading, and we speak against it now at the time of the report back. I assure members that our opposition to it is purely based on constitutional principle. I said at the second reading that we all congratulated Eddie Durie. I endorse all the comments that have been made about him in this House today and, indeed, outside this House as well, because he is an outstanding jurist. Our argument has nothing to do with that.

What we are talking about is changing legislation in order to suit the personality and the expertise of one particular man. I have to say it is an indictment that we have not been able to have other Maori jurists of equal calibre who could slot in and fill the shoes of Edward Durie in the role of Chairperson of the Waitangi Tribunal.

If we did have that kind of expertise, then we would not need to be amending legislation today.

The opposition to the Bill is very clearly set out in the minority view contained in the report, and that minority view again makes it very clear that the opposition has nothing to do with the character or expertise or mana of the particular High Court judge involved. We heard Mr Sutton talk about possible opposition being based on the fact that one High Court judge would sit in judgment of another High Court judge. That is not actually the position, either, and that is not the constitutional principle that is put at risk with this Bill. The constitutional principle that is put at risk with this Bill is that the judiciary, the Legislature, and the executive must always be kept separate, and this Bill erodes that underlying fundamental principle.

The role of the Waitangi Tribunal, as we all know, is to hear claims involving possible breaches by the Crown of Treaty of Waitangi obligations. Inevitably, the chairperson of that tribunal will be associated with the decisions that flow from the tribunal itself, and those decisions have political connotations and they have political consequences. The problem is that if a High Court judge is associated with political consequences and political decisions, that has the danger of bringing into disrepute the High Court bench itself. It has little to do with a High Court judge sitting in judgment of another High Court judge's decision.

I want to talk about the submissions that were put to the select committee. We have already heard members say that there were very few submissions. I want to put on record and express my strong disappointment at the approach adopted by the Law Society and the Law Commission in particular in relation to this Bill. If ever there were two bodies that one would expect to override political correctness and to take a strong stand in support of constitutional correctness, then the Law Society and the Law Commission would surely be in the front of most lawyers' minds and certainly in the front of most people's minds.

I believe that the Law Society did analyse the position. It said that having the same personnel in both jurisdictions---that is, the tribunal and the High Court---blurs what are very clear constitutional lines. The society did raise that issue, but, on balance, it accepted that the calibre and mana of Chief Judge Durie was such that the Bill was worth proceeding with. I am not sure about that, because I think the Law Society, faced with the prospect of taking a stand that in some way might have been seen to be against the appointment of the first Maori High Court judge, expressed reservations about the Bill on constitutional lines, then went on to say that none the less they were outweighed by the calibre of the person concerned. Would it not be nice if one could create exceptions to constitutional conventions by simply saying that the individual concerned would not take advantage of his or her position, and that the constitutional convention could be relaxed because of his or her particular circumstances? So while I thank the Law Society for at least making a submission on this Bill, I none the less consider that it was a disappointing one, because when the crunch really came it did not come through with the recognised constitutional position.

However, having said that about the Law Society, let me say that I have no such favourable comment to make about that pinnacle of correctness the Law Commission. Clearly, the Law Commission, faced with a dilemma between constitutional convention and the appointment of a Maori High Court judge, opted to do nothing, and chose not to make a submission at all. That is completely outrageous. The Law Commission, with a budget of about \$4 million, is supposedly there to advise Government, to make policy submissions, and to analyse

different Bills that are coming before the House. Here we have a Bill that goes to the very heart of constitutional principles, and what does the Law Commission do? It does not do anything at all. That was hugely disappointing from my point of view, and I think it must be noted with considerable regret that the commission did not bother to make a comment. One can only surmise why that was so. However, it is noted and it will be remembered.

The Minister for Courts said that the justification for this Bill was based on two principles. The first was that the expertise that Judge Durie had acquired during his role as Chairperson of the Waitangi Tribunal was such that that expertise should be located in the High Court. We certainly do not have any argument with that. We do not have any issue with that. We think his expertise should be in the High Court. We just do not think his expertise should be both on the High Court bench and in the Waitangi Tribunal itself. Even the Minister of Justice admitted today that it was unusual for a High Court judge to hold another office. It is very, very unusual. When we start to enter into the realms of unusual things in terms of constitutional principles, where does it stop? It can keep going for ever and ever.

The second principle that the Minister for Courts said was a justification for this Bill was that having the Chairperson of the Waitangi Tribunal also be a High Court judge gave credence to the Waitangi Tribunal process. I think most New Zealanders do give credence to that process. We have given credence to the Waitangi Tribunal process with Judge Durie there as the Chief Judge of the Maori Land Court. We do not need to have a High Court judge performing those two roles. I do not think those principles in themselves justify this Bill.

Ultimately, the constitutional principles and the separation of powers between the executive, the judiciary, and the Legislature have to be paramount. If we start fiddling around with those, it will undermine the rule of law, the legal fabric, and the whole structure upon which the justice system is based. This Bill is just a very small first step in the wrong direction as far ACT is concerned. We have opposed the Bill continuously because of that potential breach of those constitutional principles upon which the Westminster system is based and upon which our legal system in New Zealand is based.

MATT ROBSON (The Alliance): This is a most unusual Bill. I can remember the day that the Minister of Justice, the Hon. Doug Graham, rang our office to say that there would be a Bill to amend the Treaty of Waitangi Act, to extend the class of persons who may be the Chairperson of the Waitangi Tribunal to include a High Court judge, a retired High Court judge, as well as the Chief Judge of the Maori Land Court. I thought it was an eminently sensible proposal once he had explained it, and had also explained that it involved Chief Judge Durie. I had to reach deep into my soul, because I was agreeing with the Minister of Justice when shortly before that controversial Bills had been before the House that I thought were the epitome of the undermining of constitutional principles, such as the Bill on secret witnesses and the criminal harassment Bill. Nevertheless, reason saw its way through and I was able to recommend to Alliance caucus members that they support this Bill.

I have looked at the submissions made by the Law Society on this Bill. The Law Society raised important questions, but when it said in the end that ``these constitutional concerns could be outweighed if the calibre of candidate was sufficiently high'', that was an appropriate conclusion to reach. The constitutional concerns of the Law Society were really, to narrow it down, about a conflict of interest. I believe that is very easily solved. In any area where a High Court judge, or any other judge in a court for that matter, has

a conflict of interest, he or she stands aside. I cannot imagine any situation where a matter that appeared before the Waitangi Tribunal caused a conflict of interest, where either the judge himself---in this case, Justice Eddie Durie---or any other party involved would allow the case to proceed. It just would not occur. That is where constitutional principles and judicial principles are important and would be observed. That concern is solved, even if the parties themselves lose their reason at that particular time, by the fact that we have an open court system. That is really the most important constitutional principle to preserve.

The minority view that has been put forward quite eloquently by Patricia Schnauer is that we are in danger of violating a constitutional principle that the judiciary, the Legislature, and the executive be kept separate. I fail to see how we are doing that. The fundamental flaw, in my opinion, in the case put forward by ACT is that it really is saying that the Waitangi Tribunal is not part of the judiciary. As far as I can follow it, the argument is that because the tribunal looks specifically at areas of the Crown's responsibility in terms of cases brought by Maori relating to injustice, breaches of the Treaty of Waitangi, and other associated issues, somehow or other it steps outside of being part of the judiciary.

I think ACT is confused. The tribunal has actually been path-breaking in terms of the judiciary. It hears evidence very differently from some of the other courts. For instance, it accepts hearsay evidence, it accepts historical testimony, it accepts expert evidence, and---as far as I am able to ascertain, having read the reports and attended a number of hearings---it then weighs the evidence. That is slightly different from many of the mainstream courts, but it is not far from, for instance, the practice of the Employment Court, which allows hearsay evidence and much more expert evidence than other courts, then uses what is often seen as a more Continental/European approach---in particular the courts of Sweden---and gives weight to evidence according to the value of the testimony.

But in every other way the Waitangi Tribunal is a tribunal that looks at questions of legality and of justice, and comes to conclusions. Its powers, unlike other courts, differ in that it is recommendatory, but it still is a tribunal invested with powers by Parliament, and acts as a judicial body. Therefore, I would say that there is no conflict. It is not part of the executive---or if it is, it must be smuggled into Cabinet every Monday morning and take part in a secret way, and we should be aware of that. I do not think that happens. It is not part of the legislature unless somehow or other it is taking part in what we do here. I have not seen that. But it does sit as a judicial body, and therefore the animal should be described as part of the judiciary.

Much comment has also been made on the talents of Justice Durie. I have not heard any comment that suggests that he himself---because he is involved, by the very nature of this legislation, in the immediate sense---is a person unfitted for the High Court. I believe that has been established. There has been no contrary evidence that he is incapable. But, to add further to that, I would say that it is because he is on the Waitangi Tribunal, and because he has had that experience that is so pivotal to much of our law, that he is more than eminently suited to be on the High Court. Far from being a person who will be in conflict with the High Court, that experience above and beyond his other judicial attainments---and he is a competent lawyer, obviously, in many areas, and has been shown to be so---adds to the High Court. It does not detract from it.

In summary, I believe that, firstly, this legislation is eminently

sensible because it meets a need. Secondly, Parliament has not bound itself by some frozen ontology in terms of constitutional principles, but has said: ``Here is a new situation. How do we deal with it?'. It has dealt with it by bringing appropriate legislation. It has dealt with it by being creative, certainly, in looking at the problem, and has said: ``We don't want to remove a particular person from the Waitangi Tribunal, because he will be a loss to the tribunal, but we do want this person to serve as a High Court judge.''

But it goes beyond the personal, because that possibility is there for other candidates who are suitable, as well. An obstacle to our putting some of our most talented people on, in this case, the Waitangi Tribunal, then on to the High Court, is removed. Why should it not be there? It will not advance justice, and it will not advance the needs of our people. People should be able to carry out duties on both the Waitangi Tribunal and the High Court.

In conclusion, the Alliance gives its support to the Bill. I urge the minority of members who are voting against it---which of course is the right of those members---to reconsider, so that a unanimous Parliament supports this important step forward in our judicial history.

MURRAY McLEAN (NZ National---Coromandel): The Treaty of Waitangi Amendment Bill is a very specific Bill. It is not my intention to waste much more of the time of this House in debating it. It enables Chief Judge Durie, as we have heard, to act in two capacities: firstly, that of a High Court judge, and, secondly, that of Chairperson of the Waitangi Tribunal. Those are two very important roles, and I suggest that in no way does one compromise the other. They actually benefit one another.

I am pleased to say that this Bill is supported by the majority of the parties in this House, though I note in the report back that there is a minority view suggesting that there is a constitutional conflict in a judge having this dual capacity. That was highlighted not only by the minority view but also by the Law Society. I believe that the Law Society, in the final sentence of its submission, put the whole thing into context. The submission ``suggested that these constitutional concerns could be outweighed if the calibre of candidate was sufficiently high. We believe Judge Durie is such a candidate.''

We have heard ample evidence in this House this afternoon that Chief Judge Durie is such a candidate. He is worthy of accepting both offices, and I look forward to this Bill proceeding.

NANAIA MAHUTA (NZ Labour): I reiterate that Labour supports the passage of this Bill. It has been made quite clear that the Bill enables the Chairperson of the Waitangi Tribunal also to be a High Court Judge. I think that is an important move. Currently, and if this Bill is not implemented, the Chairperson of the Waitangi Tribunal must be the Chief Judge of the Maori Land Court. It is not possible to be both a judge of the Maori Land Court and a High Court judge. I believe that this Bill is a beneficial move. It underpins a critical decision that will benefit future deliberations of the Waitangi Tribunal, the treaty claims settlement process, and High Court proceedings.

A number of comments have already been made by colleagues about the attributes of Chief Judge Durie. He is a man of high integrity. He has expertise on Maori treaty issues and Maori tikanga, and I guess he is a bridge between Maori knowledge and Western knowledge, and Maori law and Western law. He has made an exceptional, outstanding contribution to New Zealand. I think his role as a High Court judge and representing Maori is one that all Maori are proud

of.

The Bill tackles the heart of constitutional matters with the appointment of Chief Judge Durie to the High Court. He has an intimate knowledge of the practical application of the treaty in dealing with constitutional matters. It is for this reason I believe that Chief Judge Durie will bridge a gap that has existed for far too long between the High Court and the Waitangi Tribunal. Chief Judge Durie is a man of the highest integrity, and he will continue to make an outstanding contribution to the development of constitutional matters in New Zealand.

I want to comment briefly on the concerns from the New Zealand Law Society, which was of the opinion that the decision to accept the same person to be the Chairperson of the Waitangi Tribunal and also a judge of the High Court gave it cause for concern. But if we were to remove the person, Chief Judge Durie, from the debate and to look at the Bill without such bias to an individual, then we would indeed agree that the principle of allowing High Court judges also to chair the Waitangi Tribunal, or vice versa, would provide great benefit to the deliberation of a great many matters. Many complex issues that are put before the Waitangi Tribunal do not have the same opportunity to be heard in front of a court. The tribunal is made up of New Zealanders who listen to a great many concerns, and have to grapple with complex matters of conflict resolution. The Waitangi Tribunal is indeed a unique forum for New Zealand to rectify its past and find constructive ways of moving into the future. The High Court is bereft of that fundamental insight, and I welcome the change. I think it is a positive step forward.

I reiterate that Labour supports the Bill and its intent and purpose. Chief Judge Durie will provide a bridge between the determinations at the Waitangi Tribunal level and what comes before the High Court. Indeed, if we had the opportunity to ask the Government questions today, I would ask what the Government's response was to the matter put before the Waitangi Tribunal by wananga---establishment grant funding and the long-term issue of equity funding for wananga. We grapple with these types of issues every day in Parliament. These are the types of issues on which, I believe, Chief Judge Durie will provide clear direction to our country and to Parliament in his deliberations. I welcome the change and support the Bill. Tena koutou.

GERRY BROWNLEE (NZ National---Ilam): I support this Bill.

The debate having concluded, the motion lapsed.

Bill to proceed.

## **8 Dec 1998, 45<sup>th</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 574, pp14003-14008**

### **Treaty of Waitangi Amendment Bill** (In Committee)

In Committee

Clause 1 agreed to.

Clause 2. Waitangi Tribunal

The CHAIRPERSON (Geoff Braybrooke): Just before I call the honourable member, can I say an amendment has been tabled in the name of Patricia Schnauer, to clause 2.

Hon. PHIL GOFF (NZ Labour---New Lynn): Clause 2 is probably the substantive clause, because it actually changes the nature of who can be appointed Chairperson of the Waitangi Tribunal. The existing Act requires that the Chairperson of the Waitangi Tribunal be the Chief Judge of the Maori Land Court. Both positions are currently held by Chief Judge Durie. The change that is made allows the Chairperson of the Waitangi Tribunal to be alternatively a High Court judge or a

retired High Court judge.

The Minister in charge of Treaty of Waitangi Negotiations has acknowledged that the express purpose of this change is to allow Chief Judge Durie, who has now been appointed to the High Court, to continue in his capacity as Chairperson of the Waitangi Tribunal. The reason for that is the expertise that Chief Judge Durie has, and the confidence of the judiciary, and, indeed, the confidence of the wider legal community and, I think, Parliament, in his fulfilling that role at an important point in time.

The argument that has arisen in relation to clause 2 is whether there is any conflict of interest in Eddie Durie serving both as chairperson of the tribunal and as a judge of the High Court. Before addressing that question, can I say I think it may be advantageous to be able to draw on a High Court judge or a retired High Court judge to be the Chairperson of the Waitangi Tribunal. It is an incredibly important position, and it is important that the person who exercises that authority has judicial skills and judicial impartiality. I would have more confidence in a person with those sorts of skills leading the Waitangi Tribunal than I would in a person who might not be as appropriately qualified.

The minority report states: ``... the bill places in jeopardy the constitutional principle that the judiciary, the legislature, and the Executive be kept separate.'' I do not accept that argument at its face value, because there is no suggestion that a person who is a High Court judge in any way reflects the position of the legislature or the executive. As the minority viewpoint in fact goes on to say, a High Court judge will often be challenging the executive for breaches by the Crown of its Treaty of Waitangi obligations.

There is some question in the Law Society submission that very clear constitutional lines ought to be drawn between the two jurisdictions. It makes the point that: ``The High Court exercises original jurisdiction, such as review, of... judicial bodies, including the Waitangi Tribunal.'' It appears that the problem, in the mind of the Law Society, is that there would be some difficulty in the High Court being critical of the role of one of its own members who is exercising jurisdiction as the Chairperson of the Waitangi Tribunal. I do not see that as an overwhelming problem. I see it as a potential problem, but every day judges sit in judgment of judgments made by other judges---usually judges at a lower level, but that is not always the case. I am reminded of the fact that when a District Court judge recently appeared on criminal charges, he appeared in the District Court. It was not seen as a huge conflict of interest to have a judge being judged by somebody at the same level of jurisdiction.

I note that, notwithstanding the Law Society's concerns in principle about the potential for some clash in jurisdiction, in its submission it comes down, on balance, in favour of this Bill, because of the particular abilities of Justice Eddie Durie. I have to say that I believe that this Bill will effectively be for the consideration of one individual. Beyond that individual's term as Chairperson of the Waitangi Tribunal, it may well be that we do not have the ongoing concern of somebody fulfilling both positions. Indeed, as time passes, the role of chairperson of the tribunal will become less as the claims currently before it are put behind us and into history.

PATRICIA SCHNAUER (ACT NZ): As has already been referred to, I have tabled an amendment in respect of section 4(2)(a) in clause 2(1). In effect, that amendment deletes the reference to a judge of the High Court, just leaving it so that a retired High Court judge or the Chief Judge of the Maori Land Court can become the Chairperson of the Waitangi Tribunal. We have done that because we believe that



having a High Court judge as chairperson of the tribunal has the potential to undermine the separation of powers between the judiciary, the legislature, and the executive.

I refer to the comments of my colleague Mr Goff, the previous speaker, because it is the reverse situation that we are trying to address. It is not just a question of one judge sitting and amending or reviewing the decision of another judge; rather, it is the contrary. It is the fact that we do not want the opportunity for political interference from a member of the executive in relation to a decision that a High Court judge is associated with---that is, we do not want the opportunity for a member of the executive to interfere in a decision that a High Court judge is associated with.

For example, very recently the Minister of Maori Affairs commented on a decision of the Treaty of Waitangi Fisheries Commission. In some respects there is very little difference between the Waitangi Tribunal and the Treaty of Waitangi Fisheries Commission. Both bodies are established by statute. Both are served by quasi-judicial officers. I accept that in terms of the legal framework of the justice system the Waitangi Tribunal is like a committee of inquiry. None the less, decisions that flow from both the Waitangi Tribunal and the Treaty of Waitangi Fisheries Commission can be considered as highly political and controversial. Often there is public discontent with such decisions that can lead to a review by the High Court.

Recently, we saw an example where a search warrant was issued and documents seized from the home of a Treaty of Waitangi Fisheries Commission commissioner and from the home of a former Treaty of Waitangi Fisheries Commission commissioner. Allegations were made that at least one former commissioner had committed a serious crime in relation to commission documents. There is potential for similar political issues to arise with the Waitangi Tribunal. Why should it stop with the Treaty of Waitangi Fisheries Commission? In those circumstances all the members of the tribunal, including the chairperson, would be tainted by such political actions.

In this instance, a High Court judge acting in two roles---as the Chairperson of the Waitangi Tribunal and as a High Court judge---undermines the independent role of the judiciary, which could be threatened and blurred by political implications. In my view that should be avoided at all costs. We saw the Minister of Maori Affairs publicly condemn decisions that flowed from the Treaty of Waitangi Fisheries Commission. That was absolutely blatant political interference in a quasi-judicial body. What is to stop the Minister of Maori Affairs from politically condemning a decision that flows from the Waitangi Tribunal?

There is a problem associated with that, because the two caps that that person wears---one as a High Court judge and one as the Chairperson of the Waitangi Tribunal---will be blurred in the public's mind. It is no use the Minister in charge of Treaty of Waitangi Negotiations frowning at me, because the reality is that is what will occur. If he thinks it through quite clearly, he will see there is nothing to stop a Minister from condemning decisions that flow from a particular quasi-judicial body. If that quasi-judicial body is headed by anybody other than a High Court judge, it does not matter; but if it is headed by a High Court judge, then the criticisms of that chairperson will be associated with the High Court bench.

My concern is that criticisms could impliedly come through from the executive of Parliament in respect of the judiciary. If the potential for that to occur is created, then we are undermining the separation of powers that the whole legal system has been built upon over a long period of time.

Rt Hon. D A M GRAHAM (Minister in charge of Treaty of Waitangi Negotiations): I am sorry I was frowning, but I was trying to understand exactly what the honourable member was getting at in her argument about constitutional principles. As I understand it---and I may not have understood it---there seems to have been three suggestions of political influence, or something, to do with the Waitangi Tribunal.

One suggestion is that there is some sort of political influence on how the tribunal makes its decisions. I know of no such incident. It seems to me that the tribunal has an immaculate record of doing what it thinks is appropriate, even if that is at some cost to the Crown. I am not certain that there is any evidence of that, or even any possibility of that, any more than there is a possibility of political interference in the decisions of the courts or any other commission of inquiry. So I do not think there is any merit in that suggestion.

Then there is the suggestion about political actions by the tribunal itself. I took it that the member was suggesting that the Treaty of Waitangi Fisheries Commission had done some strange things, and therefore the Waitangi Tribunal might do that. I do not know of any suggestion that the Waitangi Tribunal will get involved in search warrants, or anything like that, which was the issue before the court in terms of the Treaty of Waitangi Fisheries Commission. So there are no such political actions of the tribunal.

If she is saying that the Waitangi Tribunal produces political decisions, and that therefore, somehow or other, a judge should not be sitting as chairperson of it, well, all court judgments often have a political, ramificational consequence. A commission of inquiry most certainly often has political consequences, but that does not mean to say that a judicial officer should not preside. We have used judges continually on commissions of inquiry. The Cave Creek tragedy was one. Judge Noble was a sitting judge. We had Justice Mahon sitting on the Erebus inquiry. We have had prison escapes where judges have been appointed to act as a commission of inquiry. Nobody has suggested that, by doing that, somehow those judges are being got at politically by the executive or anybody else, or they are acting politically, or their decisions are deliberately political, and that therefore judicial officers should not preside over those inquiries. So I do not accept the argument at all.

There is one point that does have some validity. It is awkward if somebody sitting in a judicial function fails to comply with the rules of natural justice, or does not follow the procedures correctly, and there is judicial review of that judge's actions. Those actions are then considered by another judge. One could say that is not desirable, and that is true, but on the other hand one wants experienced judges to sit as a commission of inquiry, and those judges have to run the risk that sometimes they may be reviewed---just as judges are reviewed daily on appeals, and nobody has a heart attack about that. But it is true that if a judge is sitting, there could be a judicial review by another judge of that judge's actions. If it were found that the commission of inquiry had acted improperly in some way, it would be very embarrassing to have that done, but that risk is run whenever a judge is appointed to a commission of inquiry.

It may be that a retired judge would be better, and I accept that. But we have a classic case of somebody who is doing a superb job both on the High Court bench and as Chairperson of the Waitangi Tribunal, and this country needs him in both positions. In the future it may be that a retired judge is appointed. But to enable Justice Durie to sit we need to have this amendment proceed.

Hon. JIM SUTTON (NZ Labour---Aoraki): I want to speak against the

ACT amendment. ACT members say that the Bill, which provides that a High Court judge can also be the Chairperson of the Waitangi Tribunal, breaks down the separation between the judicial, executive, and legislative arms of Government. It seems they do not feel that separation is broken down by having the Chief Judge of the Maori Land Court also be the Chairperson of the Waitangi Tribunal, but somehow that person being promoted to be a judge in a more senior court does break down that separation. I think that is rubbish.

Basically, ACT is saying that the Waitangi Tribunal is an arm of the executive. I would maintain that it is much more a part of the judicial arm than it is a part of the executive. Its powers, with few exceptions, are recommendatory. It hears evidence. It tests that evidence. It exercises its judgment. In other words, it behaves in a judicial manner. It is more like a court than a Government department. Its members are independent like judges. They cannot be ordered by a Minister to reach a particular decision in a particular case. In that respect they are entirely unlike a senior executive of a Government department that is part of the executive. They are much more like any other judge in that they exercise independent judgment.

I think the ACT members have got this wrong. It seems to me that by driving the tribunal into the executive arm, which would be the logical extension of what they are proposing---not to allow any judge to sit on the tribunal---they would be breaking down the proper separation of the executive, with its political control, from the Waitangi Tribunal, which has to exercise an objective, neutral, judicial judgment over the issues placed before it. I think that rather than improving matters, the ACT amendment would make them worse.

PATRICIA SCHNAUER (ACT NZ): Behind this amendment is an attempt to ensure and preserve the independence of the High Court bench from any comment or criticism from the executive. That is important, because if the executive is able to comment in a critical way about a decision with which a High Court judge has been associated, then that can only lead the High Court bench into disrepute. I used the Treaty of Waitangi Fisheries Commission as an example of that, because both the Waitangi Tribunal and the commission are bodies that have been created by statute. They are both served by quasi-judicial officers. Yet we have seen a Minister of the Crown criticise and comment in this House in a very, very public way on a decision that flowed from the Treaty of Waitangi Fisheries Commission.

I am suggesting that if a member of the executive is allowed to go around criticising in such a very public way decisions that flow from, for example, the Waitangi Tribunal, on which a High Court judge sits as chairperson, then that has the potential to bring into disrepute and to bring into controversy the High Court bench itself. It was for that reason that I used that example, because I think there is an analogy between the Treaty of Waitangi Fisheries Commission and the Waitangi Tribunal. I think it is important to recognise that. Yes, there are always examples of judicial review of a tribunal decision and what-have-you. That is a separate argument totally.

What is of concern to ACT is that political decisions that flow from the Waitangi Tribunal inevitably have very serious implications for wider New Zealand. Often those decisions are highly criticised. If a High Court judge becomes embroiled in that sort of controversy over a decision that flows from the Waitangi Tribunal, it has the potential to undermine the credibility of the judiciary, it has the potential to raise criticism between the executive wing of Parliament and the judiciary, and it blurs the separation of powers. That is the reason for the amendment, and I urge members to support it.

Rt Hon. D A M GRAHAM (Minister in charge of Treaty of Waitangi

Negotiations): I will just take time to answer that, because I still do not accept it. There is nothing improper with anybody in this country criticising a decision of any judicial body or any commission of inquiry if he or she thinks it is wrong. What is improper is to criticise the judge personally. But there is nothing wrong with any person standing up and saying: ``Look, the court has ruled that A equals B, and I don't agree with it.' ' Indeed, Parliament changes the law because it does not agree that A ought to equal B.

So there is nothing untoward about somebody saying that the Waitangi Tribunal's findings in respect of Taranaki or somewhere are wrong. That is all right. That does not suddenly make the judge or the chairperson or the members of the tribunal politically embarrassed. They say: ``Well, we've done our best. This is our view. These are our findings.' ' If people do not agree with them, that is their right.

We are certainly not living in a country where a court or a commission of inquiry makes findings, and nobody can comment adversely about them. That is absurd. It has never been the law, it has never been the case, and it never should be the case. I regret to say that I just cannot accept the ACT amendment at all.

The CHAIRPERSON (Geoff Braybrooke) put the question that the following amendment in the name of Patricia Schnauer to clause 2 be agreed to: to omit subclause (1)(a), and substitute the following paragraph: (a) A retired Judge of the High Court or the Chief Judge of the Maori Land Court, both being a member of the Tribunal and its Chairperson, and is appointed by the Governor-General on the recommendation of the Minister of Maori Affairs made after consultation with the Minister of Justice.

A party vote was called for on the question, That the amendment be agreed to.

Ayes 8

ACT New Zealand 8.

Noes 112

New Zealand National 44;	Independents:	Henare,	Morgan,
Labour 37;	Batten,	Kirton,	Morris,
Alliance 12;	Delamere,	Kopu,	
Waitai.Independent 10.			
New Zealand First 8;	Elder,	McCardle,	
United New Zealand 1;			
Majority against: 104			

Amendment negatived, and clause 2 agreed to.

Clauses 3 to 5 agreed to.

Title agreed to.

Bill reported without amendment.

## 8 Dec 1998, 45<sup>th</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 574, pp14003-14008

### Treaty of Waitangi Amendment Bill (Third Reading)

#### Third Reading

Rt Hon. D A M GRAHAM (Minister in charge of Treaty of Waitangi Negotiations) on behalf of the Minister of Maori Affairs: I move, That the Treaty of Waitangi Amendment Bill be now read a third time. I am grateful to those who took part in the debate in the Committee stage. Only one issue caused any comment. That was the suggestion that if we have a High Court judge sitting contemporaneously as Chairperson of the Waitangi Tribunal, that person, and therefore the judiciary as a whole, might be embarrassed were criticisms to be made of findings of the Waitangi Tribunal. I do not accept that argument, nor does anybody else in the House apart from the ACT members. The amendment to deny a sitting judge the right

to be the Chairperson of the Waitangi Tribunal was lost by 112 votes to 8. I think that reflects the validity of the argument, with all due respect to my legal colleague.

This is an important little Bill. It gives cognisance to an outstanding New Zealander who has served this country extraordinarily well over the last 15 to 16 years as Chairperson of the Waitangi Tribunal, and who deserves to be, and now has been, elevated to the High Court bench where he is serving with distinction.

Hon. PHIL GOFF (NZ Labour---New Lynn): The Labour Party has supported this Bill through its second reading and Committee stage and will continue to support it through the third reading. It is a relatively straightforward Bill. Effectively, it widens the background from which the Chairperson of the Waitangi Tribunal can be drawn. At the present time the chairperson must be the Chief Judge of the Maori Land Court. Chief Judge Eddie Durie currently holds both the position of Chief Judge of the Maori Land Court and chair of the tribunal. With the passing of and assent to this Bill a Chairperson of the Waitangi Tribunal will be able to be chosen from the ranks of the High Court or may be a retired High Court judge.

This Bill has been brought about by the fact that Chief Judge Eddie Durie has now been appointed to the High Court. It is not appropriate for him to continue to be the Chief Judge of the Maori Land Court, but the Minister believes---and I think he has the support of the judiciary and most parliamentarians---that it is appropriate for Chief Judge Eddie Durie while being a High Court judge to continue to hold the position of Chairperson of the Waitangi Tribunal.

This situation is determined to be appropriate because Chief Judge Eddie Durie has established a reputation as an extraordinary New Zealander. I welcome the fact that he is the first Maori to be appointed to the High Court, and that he was appointed on the basis of his skills and expertise, which will considerably strengthen the High Court. However, he also has a level of experience and expertise that it is important to maintain on the Waitangi Tribunal for the period that it is considering the cases that have flowed from the hearings of land claims going back to 1840. I think that the submissioners, the judiciary, and parliamentarians all acknowledge that there is benefit in maintaining his expertise there.

I must confess to some concern that splitting his time between the High Court and the Waitangi Tribunal will bring pressures on the way in which he can carry out both of those roles. I think that the situation of having an High Court judge who is also Chairperson of the Waitangi Tribunal may well be a one-off thing reflecting his particular skills, and reflecting the fact that hopefully in the future the Waitangi Tribunal will be much less busy as we proceed to deal with and finalise the problems associated with past injustices arising out of the Waitangi Tribunal. Some may say that that is an optimistic viewpoint. Certainly, most of us believe that the bulk of the work to be done by the tribunal will be considered in the immediate future rather than in the long term.

The ACT party moved an amendment through the Committee stage that would have prevented the appointment of a High Court judge as the Chairperson of the Waitangi Tribunal. Effectively, that would have also meant that Justice Durie would not have been able to fulfil any responsibilities on the Waitangi Tribunal.

I refer the House to the submissions made on this issue by the New Zealand Law Society. The Law Society made the point very clearly that it believes that having an officer acting in both capacities can enhance the mana of both the High Court and the Waitangi Tribunal. I have to say that given the importance of the work done by the

Waitangi Tribunal, I would have more confidence in that body chaired by a person of a calibre who can be a High Court judge, than I would if that person was of a lesser calibre.

The points made by the ACT party, however, do need to be addressed. They were debated in the Committee stage. Mrs Schnauer said that she wanted to protect the independence of the High Court bench, and she said that if the executive was able to comment critically on a decision that a High Court judge serving as chair of the tribunal made, that would bring the High Court into disrepute. I do not believe that that is the case. The Minister, I think quite correctly, pointed out the distinction between the ability to criticise a decision---and any one of us in this House has the ability quite properly to criticise a decision of the High Court---and the criticism of the individual who held that position, which in normal circumstances would be inappropriate, respecting the separate jurisdictions of the two bodies and the disadvantages that flow from one publicly attacking the other on a personality basis. But, of course, this House must have the ability to criticise a court decision. Often a judge has made a decision and this House has changed the law because that decision was inappropriate for the wider New Zealand community. That is quite proper in a constitutional democracy.

I think that Mrs Schnauer also made the point that political decisions flow from the Waitangi Tribunal. That is true. There are political consequences---almost by definition---from a decision of the Waitangi Tribunal. The Waitangi Tribunal does not make a binding decision, it makes a recommendatory decision, and therefore a political process flows from that. This is not too different from the fact that any commission of inquiry, which is often headed by a High Court judge, will make a decision that has political implications and demands a political response.

In short, I do not believe that the case put by ACT that we could not have a High Court judge who is also Chairperson of the Waitangi Tribunal carried adequate weight to be considered favourably for support in this House. The Labour Party opposed that amendment to clause 2, as I have already outlined.

I think that the decision to allow Justice Durie to continue in the capacity of chair of the tribunal is a worthwhile decision, and he will carry out both of his roles with distinction. It is very important to have in the position of Chairperson of the Waitangi Tribunal somebody who can look impartially at the issues before the tribunal, who can move easily in both cultures, and who respects the importance and the place of each of those cultures in New Zealand's way of life.

The Labour Party supports the third reading of this legislation. Hon. GEORGINA TE HEUHEU (Associate Minister in charge of Treaty of Waitangi Negotiations): I am pleased to speak on the third reading of this Bill. Given that it is widely supported across the House, and given that the Minister has appropriately addressed the concerns raised in the Committee, specifically those raised by Mrs Schnauer, I think there is nothing more to be said other than it is an important little Bill.

It recognises and confirms the recent appointment of Justice Durie to the High Court. Mr Goff may be right; this may be the only time when a person who is a current High Court judge also holds the position of chair of the tribunal. What it does do, though, is leave that as an option while at the same time recognising the unique jurisdiction of the Waitangi Tribunal and the fact that the capability, capacity, knowledge, and wisdom required to chair that may now also be available to the High Court bench.

As I said earlier, I am sure that Justice Durie will be happy when

this has gone through the House. It then allows the Minister of Maori Affairs to think about appointing a new Chief Judge of the Maori Land Court. It also allows Justice Durie to concentrate on the tasks he has, both as a High Court judge and as the Chairperson of the Waitangi Tribunal.

In relation to the issue raised by Mrs Schnauer that we could not have a situation where a High Court judge was also the Chairperson of the Waitangi Tribunal, in her argument she referred to the Treaty of Waitangi Fisheries Commission, as if to say that that body was a similar body to the tribunal. That underscores the fact that the tribunal is a judicial body. I think that has to be said, and people have to be reminded of that. It is a judicial body and it acts in a judicial way. The fact that we now have a High Court judge also acting as chair of that tribunal confirms the judicial nature of that body. So it is important to lay to rest the arguments that Mrs Schnauer made, because they seem to be without merit.

In any event, I am pleased to support the passage of this Bill. It recognises a great New Zealander, but it also recognises the importance of the capacity and the wisdom that are embodied in Waitangi Tribunal work.

Hon. JIM SUTTON (NZ Labour---Aoraki): As my colleague has said, Labour supports this Bill. Although many of the people who have spoken in support of it do so because of their particular regard for Justice Durie and the need to keep him as Chairperson of the Waitangi Tribunal at this point, even though he has been promoted---rightly and deservedly so---to the High Court bench, I believe it is a good move to extend the available choice of persons for chair of the tribunal when the time comes that we need to appoint a new chair. The importance of the work of the tribunal is such that it is important that New Zealand can get somebody of the very highest calibre, and to be able to pick one from a choice of a dozen or more is a lot better than being able to pick one from a choice of one. It might be easier to make a Waitangi Tribunal chair out of a High Court judge than it is to make a High Court judge out of a tribunal chairperson if in future one has to go outside the Chief Judge of the Maori Land Court to get the person one wants.

Because of the number of cases that go to the Waitangi Tribunal, we find that the body of law---the decisions made in the High Court, the Court of Appeal, and indeed in the Privy Council---has grown enormously since the Waitangi Tribunal was established and the present rule for the appointment of the chairman was put in place. All our judges now know a lot more about the law in respect of the Treaty of Waitangi than they did at that time. Indeed, the law of aboriginal rights, the doctrine of aboriginal rights, the international law, and the precedents that are considered---not just from the courts with a British heritage but from courts in other countries as well---are freely drawn upon and the reasoning is influential around the world. Everyone knows more about it.

It is not so necessary to go to the Maori Land Court to find people who are familiar with the concepts involved---not at all. In fact, the work of the tribunal will, hopefully, in the next few years shift very much from being overwhelmingly concerned with breaches of the Crown's obligations in respect of article 2 of the treaty to being much more about the application of article 3. In other words, it will deal with the way in which Maori and Maori institutions and customs are integrated into the life of the nation, and interpret in a meaningful way the granting under the treaty of all the rights and privileges of subjects of the Queen to Maori.

These days that means to play a full part in the life of the nation. I think it meant that then, but these days most of us

recognise that simply giving people equal rights in a totally alien tikanga is not equal rights at all. The institutions and practices in which they exercise those rights must be compatible with the traditions, understandings, and way of operating of both parties to such an agreement of a partnership nature.

So the work of the tribunal is likely to change, and it is more important than ever before that the chair of the tribunal and the tribunal itself can overarch between the competing points of view of Maori on the one hand and the heirs and successors of the settler Government on the other. That gap must be bridged. It is being bridged, but one of the ways in which that can be done is through the work of the Waitangi Tribunal. Therefore, the person who chairs that tribunal has to have particular gifts, insights, and powers of leadership. It is hard to think of a position for which it is even more important to choose the very best person, when the time comes to choose a replacement.

PATRICIA SCHNAUER (ACT NZ): The ACT party has spoken against this Bill on the second reading, we spoke against it in the Committee stage, and it only follows that we will speak against it on the third reading. Consistency is something that the ACT party is well known for. We will continue to apply those principles of consistency throughout the political career of this party, which will be long indeed. Having said that, let me say---unless anybody is mistaken---that the reason the ACT party is opposed to this Bill is because we believe it undermines the constitutional principles and places at risk the separation of powers between the judiciary, the executive, and the Legislature of Government. If this Bill was simply to be voted on according to the expertise of Justice Durie then it would be very simple indeed. Of course, the ACT party has no problem at all with the appointment of Justice Durie as a High Court judge.

As an aside, I am surprised that we have an appointment of a new judge who immediately takes on a part-time role. With the large number of cases that are waiting to be determined in the High Court, having the appointment of a full-time judge would be a lot more helpful than having the appointment of a part-time judge. Not counting the Chief Justice and the Court of Appeal judges, as at 25 October we had 31 High Court judges and seven acting High Court judges. In my view that situation should be remedied. It could have been remedied if we had had the appointment of Justice Durie as a full-time High Court judge, and not serving on the tribunal as Chairperson, in that double role.

The other problem, and what this really highlights, is the unfortunate fact that we do not have or there appears not to be somebody of equal competence who could replace Chief Judge Durie as Chairperson of the tribunal, because, indeed, if there was then that person would have been appointed. I think the judiciary and the Government have to address that matter in the training and the provision of suitable Maori candidates to head the tribunal for the future. I think that is something that we can take out of this particular Bill.

The other issue is that it highlights the potential risk of mixing politics and the judiciary. I say it is a potential risk. Although I have tried to put the position to the House today, it has been rejected by most members here. I respect the reasons for that rejection. However, I do urge members to consider and place at the forefront of their thinking and deliberations, in terms of such issues, that constitutional principles have been hard-fought for, they take a long time to achieve, and they have been with us for a very long time.

That is why the Law Society actually highlighted that particular



problem. I accept that it went on to say that in the circumstances of the personality involved in this particular case it gave rise to a suitable departure from those constitutional principles. I think that that was a disappointing conclusion by the Law Society, but at least it made a submission.

I would reiterate my disappointment that the Law Commission failed to make a submission on this Bill. That in itself is an indictment of the Law Commission. It is something that will certainly be remembered by me. I would urge the House to consider the fact that the commission did not make a submission on this Bill and the reasons for that.

I would like to take a couple of minutes to look at the tribunal itself, and its composition. It is interesting to note that there are two retired District Court judges as members of the tribunal. No current District Court judges sit on the tribunal. I think that this reflects a past practice not to involve members of the judiciary on what is often seen as a tribunal that has political consequences and from which political decisions flow. That has been a very sensible approach. Unfortunately, that very sensible approach is being abandoned with this Bill. However, much has been said about this. I do not think that I can repeat again for another 5 minutes our concerns on this Bill.

ACT caucus members believe that it blurs the distinctions between the separation of the judicial arm of Government, the legislative arm of Government, and the executive. I listened with interest to the comments made by the Minister for Courts saying there was no similarity between the Waitangi Tribunal and the Waitangi Fisheries Commission. I do not accept that. They are both bodies that have a function that is quasi-judicial; they are both bodies that are created by statute; and they are both bodies that have the potential of being criticised by Ministers of the Crown. Indeed, we have seen it occur on one occasion with the Waitangi Fisheries Commission. In any event, ACT continues to oppose this Bill.

NANAI MAHUTA (NZ Labour): I just want to pick up on a point made by my colleague Patricia Schnauer about the Waitangi Tribunal and the Waitangi Fisheries Commission having the same function---they do not. The tribunal is a commission of inquiry that enables people to submit evidence, and to be heard. It enables research to be put forward, and debates and arguments to be heard so that matters can be deliberated on by the tribunal and recommendations made. It is simply not right to say to the House that both the Waitangi Fisheries Commission and the Waitangi Tribunal have the same function.

The effect of this Bill is that Chief Judge Eddie Durie, who has been appointed to the High Court, will also be retained as Chairperson of the Waitangi Tribunal. Many comments have been made in the House about Justice Durie having the attributes of high integrity and balanced judgment. I would agree with that. I also agree that it is right that this Bill proceed, because he has had experience and expertise, especially in treaty matters and treaty claims. He has received invitations to address many international forums concerning the Treaty of Waitangi, land claims, constitutional matters, and relationships between Maori and Pakeha.

I want to pick up on a point made by my colleague Mr Jim Sutton, because it is right that in the future the tribunal will have to determine a lot more issues concerning article 3 of the treaty. Chief Judge Durie has the necessary skill to determine such matters. The tribunal has already had claims submitted by the Waipareira Trust seeking social service funding; claims from wananga, which say that they should receive establishment grant funding; and claims from Maori that Government policies have not given particular regard to

ensure that the principles in article 3---of equality, equity, participaton, and access---are maintained.

This will be the biggest area for the Waitangi Tribunal to consider in the future. All members must be mindful of that. In the future the people sitting on the Waitangi Tribunal will need such skills and an intimate knowledge of treaty matters so that they can determine such complex issues. We will always find ourselves, in this House, debating, disagreeing, and criticising recommendations made by the tribunal. However, it is the only forum where such matters can be heard in full.

I believe that Justice Durie has the necessary expertise and insight to determine such matters as this. He will also be able to take this insight and expertise to the High Court when they deliberate on matters.

I think this Bill makes an important change. We have made a critical decision here today that will benefit future consideration of matters before the tribunal. There will be a number of treaty claims coming before the tribunal and there will be numerous cases taken to the High Court. It can only benefit the nation that we have made this decision here, today, and I support it.

MURRAY McLEAN (NZ National---Coromandel): Claims before the Waitangi Tribunal are becoming increasingly complex, and I think that Chief Judge Durie, as we have heard this afternoon, has done a tremendous job on the tribunal in working through those claims. Similarly, the High Court and the judges of the High Court in this country are regarded as some of the best in the world in the judicial system. It is fitting that although Chief Judge Durie's appointment to the High Court gives him that authority he still has the ability to sit on the tribunal.

This Bill is supported by most of the other parties in this House, and I urge members to support it.

A party vote was called for on the question, That the Treaty of Waitangi Amendment Bill be now read a third time.

Ayes 112

New Zealand National 44;	Independents:	Henare,	Morgan,
Labour 37;	Batten,	Kirton,	Morris,
Alliance 12;	Delamere,	Kopu,	Waitai.
New Zealand First 8;	Elder,	McCardle,	
United New Zealand 1;			

Noes 8

ACT New Zealand 8.

Majority for: 104

Bill read a third time.

6 Nov, 47<sup>th</sup> Parliament, 1<sup>st</sup> Session, Hansard Vol 603, pp1658-1670

### Treaty of Waitangi (Final Settlement of Claims) Bill

TREATY OF WAITANGI (FINAL SETTLEMENT OF CLAIMS) BILL

First Reading

RODNEY HIDE (ACT NZ): I move, That the Treaty of Waitangi (Final Settlement of Claims) Bill be now read a first time. At the appropriate time I will move that this bill be referred to the Justice and Electoral Committee. Although there are a lot of diverse interests in the treaty settlement process in New Zealand, there should be one thing that everyone in this Parliament agrees upon---that is, having embarked upon this course, the Crown must show

some honour and settle these claims, and settle them expeditiously. The Crown should be upfront about what it is prepared to pay, about the process to be followed, and about the timetable for the process.

There can be nothing more miserable than preparing a claim, sending it to the Waitangi Tribunal, then waiting years and years for settlement. We know that the claimants who prepared the claims will be gone before they get heard and settled. Where is the honour in that? If this Parliament is serious about settling historical treaty claims, then let us as a Parliament settle them, and settle them once and for all for this generation---not for the next, not for the one after that. That is the purpose of this bill.

The process of settling treaty claims in this country is a disgrace, and I do not think that anyone in this Parliament can take much honour from it. Mr Peters is right: there is an elite group who are benefiting from the process. Millions and millions of dollars are being spent on lawyers, consultants, and civil servants, while the people whose name the claims are in, sit out in the regions and rot. How must they feel when they see this process and the huge sums that are being spent? The ACT party does not claim to have all the answers to this matter---of course, it does not. But we have to front up.

David Benson-Pope: Pyramid society.

RODNEY HIDE: It is always interesting with Mr David Benson-Pope. Not once can he address an argument. Not once can he deal with a serious issue, such as the settlement of treaty claims. He just sits there and chips away. I say to that member that he might not think that the treaty claims process in New Zealand is important for this generation or the next, nor might he think that what we are doing here in Parliament tonight is serious; but there are members in this House who are prepared to join in the debate and consider the issues. I say to Mr Benson-Pope that the voters did not send members here to make silly jokes that are not even funny.

That is the trouble, because this bill actually forces the Government, and us as a Parliament, to get real and put in a time line. Those who are, as it were, on the other side of the treaty claim process are equally frustrated. There is a growing sense of division, of racial strife, and of unhappiness, and I fear that the longer this process goes on, the more divided our country will become.

I say again to my parliamentary colleagues that there is a way of handling this process, but we need to do it with resolve and with some firmness of purpose.

At the rate the Waitangi Tribunal is going, it will be dealing for another 150 years with just the claims it has before it. Do we seriously want to bequeath that to our children and to our grandchildren? I do not think so. So the first thing this bill does is to set up a timetable. I have to apologise to my parliamentary colleagues for the dates being wrong, but the bill has sat on the Order Paper for some time. The select committee will be able to adjust the date---that is, that all claims have to be in by the end of the year. What can be wrong with that, given that these are historical claims?

Second, it states that all claims must be heard in 5 years. Why not? World wars were fought and won in less time. Great things have been done in less time than that. Huge effort on the part of human beings shows what they can achieve. Are we seriously saying that in New Zealand we are so useless that we cannot hear those claims in 5 years? I do not think so, because the problem is that the people involved in this claim process do not want it to end. They do not want the claims to be settled.

Does anyone seriously think that Donna Hall wants to see the end of this business? I do not think so. She has bills to pay. Do we

seriously think the civil servants at the top of this tree want to see the end of the process? I do not think so.

What about the beneficiaries of this treaty process, the Māori who lost their resources originally? They want to see it finished. They want to see the claim ended. They want to see a result, so the bill states that all claims must be heard in 5 years.

Then it states ``All claims settled in 10 years.'' Imagine what we could do for our country if we could do that. What is wrong with setting a goal, setting a target, saying ``Yes, we are determined; yes, there are different views in New Zealand over the issues of these treaty claims, but let us set a target to have them finished in 10 years.''? That would be something to achieve together.

The bill also sets up a council to look at the issue of attitudes to race relations in New Zealand, and what it means to have one law for all New Zealanders, and to report to the Prime Minister. Is that not an important principle that our forefathers fought and died for, for which our forefathers signed the treaty, to have one law for all New Zealanders? Is that not what the treaty is about?

I look around the House and I believe we will gain support for this bill. When Mr Quigley first introduced the bill, only two parties supported it, the ACT party and the United Party, and there were nine votes when it was introduced in 1998. The National Party, led by Doug Graham and Nick Smith, opposed it; the Labour Party opposed it; and the other parties opposed it. However, I look around now and see through the work of Mr Quigley in this bill a new determination. The National Party will support this bill because that was its policy at the election.

New Zealand First must support this bill, because that was its policy at the election. Those members might shake their heads but we have the clips of Mr Peters; the United Party will, and so will the Greens, because it too, like the ACT party, believes in fairness.

Hon. MARGARET WILSON (Minister in charge of Treaty of Waitangi Negotiations): I rise, not in support of this legislation; I rise to explain the Government's reasons for not supporting this legislation. I am appreciative that Mr Hide reminded the House of the history of the legislation, and that when this bill came up before---or one very similar---as he said, it was defeated by a majority of 102 votes. It may well be that it attracts more support in this House, and if it does attract support from the National Party, that would indicate that, now, no longer having the conscience of Sir Douglas Graham sitting on those benches, it feels free to show its prejudice and lack of understanding of the true nature of the treaty. I am sure that not a member of the House does not support the timely resolution of longstanding treaty grievances. However, this bill is not the answer. It is a typical ACT ``quick-fix, let's push it under the carpet, let's ignore that it is about a partnership, that it is about negotiation, and that the other partner may have some rights in that process''.

It is for that, amongst other reasons, that it is seriously flawed. The most glaring flaw is its failure to recognise the constitutional importance of the Treaty of Waitangi, and the responsibility of the Crown to Māori. The Crown has accepted that it must resolve legitimate treaty grievances if this country is to move forward. However, it knows that imposing artificial deadlines with no logic or basis to them, beyond the fact that it might irritate Mr Hide and ACT members, would only, in the long term, create more grievances.

So, I would argue that this bill will achieve the exact opposite of what it sets out to do. For instance, the bill does not

distinguish between historical and contemporary claims. It is an important difference for those who are serious about this process. Removing the right of hapū and iwi to lodge contemporary claims would mean that the Waitangi Tribunal could not inquire into the compliance of contemporary actions of the Crown in respect of the principles of the treaty.

There are now, as members know, hundreds of pieces of legislation that do acknowledge the importance of the principles of the Treaty of Waitangi. That would raise an extraordinarily serious question of access to justice. Again---too simplistic: access to justice is obviously not a priority for the ACT party. The whole point of the treaty settlement process is to resolve historical grievances, not to create new ones. It is also just as important to provide the basis for a new, mutually beneficial relationship that moves beyond the settlement of the grievances.

Reconciliation cannot be forced or imposed, not even by Mr Hide in the ACT party. It is not a unilateral process, a matter that seems to have been totally overlooked by Mr Hide and the ACT party. Negotiations are bilateral in the real world, not imposed by you or one party, if in fact they are meant to be meaningful. They must also take into account the multiple interests across local communities, which also have an interest in the settlement of grievances. You would take all that away because you know better than anyone else.

Another point that the member appears to have misunderstood is that the number of claims is not the measure of the likely number of settlements. Putting an end to the number of claims registered will have no bearing on the number of settlements, or the size of the task to resolve historical grievances under the treaty. Each settlement represents the resolution of many claims. That has been a matter of public record. That is a matter that you have failed to understand in your arguments in support of this legislation.

Rodney Hide: I raise a point of order, Mr Speaker. I thought it was just a few slips and I was prepared to let them go. However, the Minister on her feet cannot constantly go through her speech accusing the Speaker of not understanding this, of not seeing that, of not putting that in his bill, and I draw her back to the Standing Orders. I know the Attorney-General might think the rules do not matter. It is an important rule of this Parliament, and, Mr Speaker, I ask you to explain to the Attorney-General the rule in the Standing Orders about the use of the word ``you'' because she would benefit from it.

The ASSISTANT SPEAKER (Hon. Clem Simich): I thank the member for raising that point, and ask the Minister not to bring the Chair into the debate.

Hon. MARGARET WILSON: I apologise Mr Speaker, particularly for my lapse in that respect. In a relatively short time, good progress has been made, and continues to be made, in the settlement of claims. The Government has increased the pace of settlements to an unprecedented rate of one settlement for every 6 months.

Rodney Hide: The settlement is for everyone in the country.

Hon. MARGARET WILSON: Settlement of claims is not an excuse, it is an achievement, according to most people, but obviously not Mr Hide. Five settlements have been signed, and we expect to complete another before Christmas. We are currently engaged with about 25 different claimant groups. I know that these facts may well be inconvenient for those who wish to support the bill, but the truth is that progress is now being made because the claimants can see that the Government is willing to make progress and to work with them towards the settlement of grievances. I also point out that the settlement process has undergone significant scrutiny over the past 3 years, including that from the High Court and the Waitangi Tribunal. I know that Mr Hide thinks that is probably not important, but it highlights an

endorsement and legitimising of the process we are making. Perhaps Mr Hide considers his judgment is more important than that of the High Court and the Waitangi Tribunal.

Perhaps, more important, each case has emphasised the importance of getting the process right. It does take time to get it right, and it can only be got right without arbitrary and unnecessary time limits, to ensure that when the Crown is addressing the grievance of one particular group, it does so without compromising the rights of others. Yes, it is complicated, but it is a balancing of legitimate rights. That is what must be recognised. The Government cannot impose its will on a party that is an equal in the negotiating process. That is the fundamental flaw in this legislation. It is authoritarian in its underpinnings. Therefore, it is doomed to failure. Why should we put everyone through that process of failure when it is so obvious to everyone---except the ACT party---that it cannot possibly succeed?

This Government has committed to making the process succeed, as it has indicated before the select committee that is assigned, the Māori Affairs Committee---the appropriate select committee, if this was ever to get to a select committee. I find it interesting that Mr Hide did not want it to go to the committee that has the expertise in these matters, and I wonder why.

I will just conclude with making another point. There is one law in this country, and it is the law that applies to all its citizens. The law is interpreted in a variety of ways, to ensure that justice is seen as being just as important as the law. The law that is one law is made by us in this Parliament. No other laws are recognised in this land. This House recognises the importance of diversity in our laws to be relevant to those whom we expect to abide by them. If there is to be more than one law in this land, this House will make that decision. But it has not. That is the point. Mr Hide may not know why he is here, but the rest of us do. It is to make sure we have laws that are relevant to all New Zealanders.

Hon. GEORGINA TE HEUHEU (NZ National): The stated purpose of this bill is to provide a time frame and a context within which the full and final settlement of claims to the Waitangi Tribunal will take place. In so far as that is the purpose of the bill, National supports the referral of the bill to the select committee. We do that because in respect of historic claims at least, National's current policy mirrors some of the thinking that is contained in this bill. The explanatory note of the bill sets out certain sentiments that mirror our own, so it is not surprising that our policy would have some components that are similar, as well.

The bill provides Parliament with an opportunity for members to review the framework, and, with all the parties working together in conjunction with Māori, to see whether any improvements can be made to it that might possibly result in a more timely, expeditious, and efficient settlement of historic claims. In the last 3 years the settlement framework developed in the 1990s has remained largely intact. No matter what the Minister might say about refinements or changes having been made to it, it remains intact. That means that much of---in fact, all---the hard graft was done in the 1990s. I say it behoves the Government that has followed the previous National Government to get on with the job. Particularly given its caucus is filled with Māori, one would have expected the Government to move these matters along a lot faster than it has. That is a disappointment. It is also a disappointment to Māori people out there.

A framework within which Parliament can give confidence to New Zealanders---and, in particular, to Māori---that this House is

capable of putting the highest leadership into the process would be a timely move at this point in time. Our own policy set certain time frames, but it also, additionally, recognised that to achieve the settlement of historic claims within a certain time frame we had to pump in resources, both to the tribunal process and to the Office of Treaty Settlements. Given that there is a bit of a gravy train going on and hundreds and thousands of dollars are being spent on legal and other advice, one would think that money would be better spent if it was put into the process itself, and M-aori were allowed to get to the negotiating table in a more timely fashion.

The other thing that our policy indicated was that we would put both political and management leadership into the claims process. The feedback I have from M-aori out in the traps is that they find it difficult to find the space and the opportunity to interact with leading Ministers. That is a shame; it is not good enough. If we want to give real leadership to the process, then we have to show that we are capable of doing that.

I want to flag a couple of issues, however. As I said, we support the purpose of the bill, but I just want to flag for the benefit of Mr Rodney Hide a couple of matters that I have reservations about. First, in relation to the settlement of claims, I say the historic claims are the part of the process that worries New Zealanders the most, at this time. We would move a long way forward if we could get those cleared off the decks. The second thing is that the Minister referred to---and I hope she was wrong, but much of her speech was about it---imposing deadlines. I do not see that intended anywhere in this bill, but I would like some clarification of that if one of the other ACT members takes a call. Imposing deadlines, in my view, would frustrate the process.

But setting time frames and time lines for the lodging of claims, for the Waitangi Tribunal to hear them, and for their settlement is a good thing.

Hon. JOHN TAMIHERE (Associate Minister of M-aori Affairs): This legislation that has been brought to the House goes to the heart of our constitution and of our nationhood. Regrettably, it has been brought here unwittingly in that regard by Rodney Philip Hide. I note that Rodney Hide has come back from the adjournment nicely tanned. Obviously he has circled the world in a sputnik from Albania, and has come back with a nice tan so he can talk very, very well on M-aori issues. He gets better all the time, the closer that his brain has been to the sun! I note that this legislation comes back like a bad hangover for Rodney Hide. He has been trying to champion it since about 1996, but the world and Kiwidom have moved on since then---and, thankfully, for the better.

Legislation like this is not clever; it is cunning. It is not smart but smarmy. It is not about being able but about being arrogant. In the event that one wants to put time lines on justice in terms of the way in which our Westminster-type constitution works, let us put a time line on those who seek---and as of tonight it is \$4 billion worth---to avoid and evade taxes. They are the types of people who are ACT party members.

Hon. Ken Shirley: I raise a point of order, Mr Speaker.

The ASSISTANT SPEAKER (Hon. Clem Simich): I think I understand the point of order, Mr Shirley.

Hon. Ken Shirley: That was grossly offensive. I ask that the member stand, withdraw, and apologise.

Hon. JOHN TAMIHERE: I withdraw and apologise, but I am quite excitable in this debate.

The ASSISTANT SPEAKER (Hon. Clem Simich): There should be no qualification, please.

Hon. JOHN TAMIHERE: I withdraw and apologise. I was moving on to the debate.

Rodney Hide: I raise a point of order, Mr Speaker. It is absolutely out of order for a speaker to withdraw and apologise, and then to use different words to repeat exactly the same offence. I do not think it is good enough that you allow Mr Tamihere to get away with that. I think you should sanction him, and ask him to withdraw and apologise for his second offensive remark.

Clayton Cosgrove: Touched a nerve, eh?

The ASSISTANT SPEAKER (Hon. Clem Simich): Mr Hide was a fraction behind the play. Mr Tamihere withdrew, apologised, qualified his statement, and then immediately withdrew and apologised with no qualification. I accepted that.

Rodney Hide: I raise a point of order, Mr Speaker. While I was taking my point of order, Mr Clayton Cosgrove interjected, and suggested that the offensive remark had touched a raw nerve. That, in itself, is offensive, and I would ask you to ask him to withdraw and apologise for that remark.

Clayton Cosgrove: I withdraw and apologise.

The ASSISTANT SPEAKER (Hon. Clem Simich): I thank the member.

Hon. JOHN TAMIHERE: If I could use a number of analogies, the Magna Carta, a great document signed in 1215, has relevance to the way that we work in this Parliament today. Over the following 400 years, in terms of the constitutional roll-out of the way in which Magna Carta works, two kings were beheaded on the basis of that document. I say to members that when we talk about the Treaty of Waitangi and start to align it with the way in which our constitution works, Magna Carta is part of that constitutional roll-out. The interpretation of Magna Carta has evolved over 400 years---that is OK---and was absorbed into the constitution of this nation.

One day, all of a sudden, Mr Hide and his colleagues want to end that within 1 or 2 years. That does not work. Are we now saying we will set a precedent in all civil cases that within either 3 or 6 months, or 9 or 12 months, for the sake of the commercial ability of our nation to pay for their settlement all claims with regard to our constitution must be settled and finalised? That is quite appealing to some people. But the precedent that this bill sets, where justice is denied solely because we do not have a system in place to hear it properly, sets up a wholly different grievance. The arrogance and ignorance of people who do not understand the roll-out of this measure amazes me.

We are very, very close to settling a number of major grievances. The numbers game that works in the Waitangi Tribunal will implode, because a number of grievances are significant and they are cross-claimed. They will be settled, and they will be settled within the next wee while. But can we put a time line on the right to justice?

In this House, from 1854 on, there has been State-sponsored theft. That has been acknowledged. Do we turn our back on the fact that this House has been the sponsor of those sorts of things? We cannot do that. We should not do that, and the party that I am part of will not do that. That is what makes us different from those people over there on the Opposition benches. All that they do is represent a minority. They know nothing about the culture that is evolving out there in a new generation of Kiwis.

I attended a kapa haka performance on Saturday for all west Aucklanders. Eighty percent of the babies who took to the stage in piupiu and who were acknowledging the M-aoritanga of this nation were P~akeh~a babies. They are the new babies, the future electors, and



the new Kiwis, and the types of people that Rodney Hide represents will soon be expiring. They will go to Geneva and New York with the rest of Rodney Hide's mates and sell the rest of our assets.

PETER BROWN (Deputy Leader---NZ First): I have listened with interest to all the speakers thus far in this debate, and I think some very good points have been made. The bill outlines the concerns of many New Zealanders. It seeks to bring the Waitangi claims process to an end. We would all like to see the process coming to an end, but, with respect, this bill is not the bill to do it.

Hon. Ken Shirley: Bob the Builder will do it!

PETER BROWN: That is exactly right. We want the Waitangi claims process ended, as much as anybody in New Zealand, but this bill is not the bill to do it. We have heard concerns outlined by the Attorney-General and Mr Tamihere that if one moves in the direction in which this bill is heading, we will create more grievances. New Zealand First is not prepared to do that. The majority of New Zealanders want to see the claims process settled speedily, but they want it settled fairly. They also want it settled with good grace, and they want the settlements to be full and final. We want to settle the claims in a way that is acceptable to non-M-aori and M-aori alike.

New Zealand First is not prepared to rush legislation like this through the House in order to take the pressure off the Government. We do not think the Government has performed, although I am encouraged by the remarks made by Mr Tamihere just now that we are on the verge of settling a number of major claims in the not too distant future. We want the whole process speeded up. We want to see it handled fairly, and we want to end the gravy train. There are people getting very, very wealthy on the backs of the treaty claims industry.

We say that if it is legitimate for M-aori to table a claim, it is legitimate that the claim be treated fairly. We cannot have one without the other. We cannot tell people that they can go ahead and put a claim in, but we will not handle it in a fair and just manner. We believe that the time frame has to be accommodating of the concerns. Having said that, all of us in New Zealand First recognise that New Zealanders want to bring this process to a fair conclusion in as rapid an order as we can. If we send this bill to a select committee we will be taking the pressure off the Government to perform properly, and the bill will sit in the committee, going nowhere. We all know that. However, we will pressurize the Government to do something, to do it fairly, and to do it speedily in the interests of all New Zealanders, both M-aori and non-M-aori.

MURRAY SMITH (United Future): I commend the speakers in this House who have indicated that their parties wish to see the issue of treaty settlement claims resolved, and resolved speedily. I am not personally convinced that the Government is committed to that course, because I do not believe that it is putting the resources in that it could, to have that happen. We need only look at the length of time it took for the Te Uri o Hau Claims Settlement Bill to come before the House---2 years after the settlement. It was rushed through under urgency only because the Government had promised that the legislation would be passed within 2 years, and was committed to that process. So

it was 2 years minus 1 month when the Government got the bill through the House under urgency. It was a similar case with the Ngati Ruanui Claims Settlement Bill that we passed this year. It was 18 months before the bill was introduced and passed through the House. That does not speak to me of a Government that is committed to a quick process. So I commend the need for a quick process, and I have spoken often about that.

I do not support this bill. I believe that this bill is a typically arrogant, colonialist approach to the grievance process, which says that a patronising Crown will dictate to M-aori how the settlement will happen, and will inhibit M-aori from furthering their claims if they do not get them in on time. The simple facts are that the Crown stole land from M-aori, destroyed their mana, and repressed their tikanga, and the Crown is now coming to M-aori, cap in hand, to confess that that happened and to try to put it right. The Crown is in no bargaining position. There has been no fault on the M-aori part with regard to this issue, yet the Crown is trying to dictate terms, and it continues through this bill to dictate terms to M-aori about how it will settle.

We all accept that M-aori have legitimate grievances against the Crown. For example, in the late 19th and early 20th centuries the Crown passed legislation that confiscated M-aori land without compensation, simply on the basis that it was not being used productively. Were it not the Crown that took the land, but some other group of settlers, such action would have been regarded as blatant theft, invoking the full force of the law. It is akin to my neighbour coming into my house and taking my stereo and CD collection, because I do not listen to them often enough. Taking that analogy further, what audacity it would be for my neighbour, having admitted taking the goods wrongfully, then to demand that unless I could produce a comprehensive list of all the CDs he had taken by the end of the month, he would not return what he took, or compensate me for it. That is exactly what this bill seeks to do, and what ACT and---I regret to say---National are doing in their support of the bill.

So what are the causes of the delay? Firstly, M-aori do not have the resources to do the research necessary to put their claim together. Why is that? Because it has taken 150 years for the Crown to be willing to discuss the issues in a round-table fashion. The Crown in the past has thrown money at the problem in the hope that that will resolve it. It is a bit like a wife who is upset because her husband has abused her. She finds that her husband sends her flowers but he does not understand why that has not fixed the problem. The answer, and it is similar for M-aori, is that the wife wants to talk about it. She wants to express her grief and tell her story. That is exactly what M-aori want to do as well.

Secondly, M-aori have been impoverished through the wrongs that have been done to them. Their economic base has been eroded, they need provision for the greater educational, health, and welfare problems that they have. All the statistics show the effect that the denial of M-aori and the taking of their land has ultimately had on them. They are therefore dependent on Government funding for the research that is necessary, but the Government is underfunding that. The Waitangi Tribunal does not have the resources in order to do the research it wants to do. The Waitangi Tribunal does not have the personnel to get the work through more quickly because of the lack of Government resourcing. The Waitangi Tribunal cannot get the reports written that need to be written. There are only four staff members writing reports, because the tribunal is under-resourced by the Government.

The Crown sets the terms of negotiation. It says that unless

people agree with its terms, it will not negotiate with them. It insists that large natural groupings---iwi---are those who will negotiate. Whether that is right or wrong, M-aori have to get together in large natural groupings before the Crown will talk to them. Yet the land was taken from hap~u.

NANDOR TANCZOS (Green): Of course we all wish to see a speedy and enduring resolution of historical injustices---of breaches of that crucial constitutional document, Te Tiriti o Waitangi. This bill will not achieve that. What it would achieve, in the unlikely event of it ever passing into law, is unfair and short-lived settlements, if indeed more settlements were reached, because this bill would place an arbitrary and unrealistic time frame on the settlement process. Rodney Hide asked members whether we want to bequeath a backlog of treaty claims to our children.

I say that if this bill passes into law, we would bequeath a second legacy of injustice and oppression. Do we allow thieves to set the conditions by which they go to trial? That is what we are doing right now with the treaty settlement process. This legislation would also allow the thief to set a time limit on the process. If the ACT member really wanted to see settlements speeded up, why is he so silent on the real issues---the resources available to the Waitangi Tribunal, and the processes available to claimants to address the longstanding historical injustices caused by the Crown? And where was Rodney Hide when Willie Jackson used to stand up in this House to demand more support for the Waitangi Tribunal? He was silent.

Green Party policy in these areas is clear. We support increased resources for the Waitangi Tribunal, including adequate resources for claimants to prepare and present their cases, and increased transparency and accountability. I have spoken about that in this House before. We also support the development of a diversity of models for restitution, and nationally sustainable compensation over time. Of course when we are talking about compensation we sometimes run into the very mean-minded opposition of a vocal minority of people to such compensation. I cannot help but compare the sums offered to iwi in compensation for longstanding injustices---injustices that include the murder and rape of their t-upuna, and the wholesale theft of large tracts of land, such as, for example, where we are currently offering Ng-ati Ruanui some \$40 million---with the \$120 million offered in compensation to West Coasters simply because we will not allow them to log some of the last remaining lowland forests belonging to our nation.

Underpinning this bill is a fundamental misconception. The ACT party insists on advancing the falsehood that the Treaty of Waitangi is primarily about property rights---that it cedes sovereignty to the Crown, guarantees property rights to M-aori, and offers M-aori the rights of citizenship. If the English language version of the treaty was the only one, I could see how one could make that case. However, the authoritative version of the treaty is the M-aori language version---Te Tiriti o Waitangi. Again, Green MPs, including myself, have spoken about that in this House before. Why do we take this view? Firstly, the international legal doctrine of treaty interpretation says that the indigenous language version takes precedence. Secondly, and I think more importantly, it was the M-aori language version that was signed by almost everyone who signed the treaty. The vast majority of rangatira who signed the treaty---512 of them---signed the M-aori language version. It was only about 30 who signed the English language version. Governor Hobson himself only ever signed the M-aori language version.

Clearly, it is the M-aori language version that takes precedence. That version clearly does not create, but reaffirms, the tino

rangatiratanga of Māori, specifically of hapū. Māori did not sign away authority over their people, or over their resources. So Te Tiriti o Waitangi is not just about historical injustices. In fact, it is not even primarily about historical injustices. It is about the constitutional relationship between Māori and Pākehā in this country. Until this House gets to grips with that fact, we are on a longstanding journey to bitterness.

MAHARA OKEROA (NZ Labour---Te Tai Tonga): I want to introduce my kōrero by quoting text from Harry Dansey known as ``Te Raukura'', which translates for those who do not know as ``The Feathers of the Albatross''. It says:

Across the years I hear the voices call,  
I hear the widow's cry,  
The sickening crash of rafters  
falling in the burning homes,  
The people driven out like drafted sheep.  
The men who broke and bent and turned the law  
Have done great evil---  
Not alone to those of that far time,  
But also to our own.  
And so I hold their sons to answer  
For their fathers' sins,  
And thus I justify what I may do  
In this, my day and age.

While I may not in fact visit the sins of the fathers upon the sons, what I perceive in this bill is exactly that. My interpretation of this bill is that it is nothing less than using Parliament as a tool to subjugate the aspirations of Māori through legislation, once again.

I would be hugely impressed, for example, if the sponsor of this bill had engaged in any dialogue or consultation with the treaty partner. I suspect, however, that the sponsor of this bill has merely adopted the Socratic pose, and only that. I wonder whether ACT has taken the trouble to talk with the treaty partner about the implications of this bill.

Not only is it poorly designed, but it is flawed, because of its narrow, one-sided view of the treaty settlement process. To me, it appears to be nothing but pandering to a certain segment of our society---the segment that ACT responds to. [Interruption] I am not pandering to anyone. I do not have to pander. In that respect, that makes this bill even less acceptable.

What it also fails to realise, as the honourable member Georgina te Heuheu would realise, is that any process that talks about treaty claims takes a time. And for those who are interested in listening to me, I would appreciate it. For example, it took Ngāi Tahu at least 9 years to reach its settlement with the Crown, and still it is not secure, in respect of cross-claims across their northern border.

So the process that this Government has adopted is geared to addressing not only the concerns of the public in general but also the concerns and aspirations of those who constitute the claimant body, or, shall we say, iwi and hapū. I am astounded that the sponsor of this bill had the audacity even to put it before this House.

I also understand that one of the basic assumptions behind this bill is some kind of Alice in Wonderland fairy tale vision of race relations in New Zealand. It is a fairy tale vision, because unless we get due process right, unless we progress through that due process with regard to the rights and property rights of tangata whenua in their relationship with the Crown, then I would support the Minister,

Margaret Wilson, in her claim that all this bill does is have the opposite effect---absolutely. For those who do not agree, I suggest they talk with the treaty partner.

The bill also raises issues about durability. What I see in this bill is something like a package deal: ``Let's gather them all together, put them in little cans, process them, put a label on them, shunt them through the system, and then forget about it.'' They think that for some magical reason, Māori and their aspirations with regard to treaty settlements will disappear, and then everything will be all right. I am suggesting, as strongly as I possibly can, that our issues must be dealt with in the appropriate way, which are just.

Hon. KEN SHIRLEY (Deputy Leader---ACT NZ): This is a very good bill brought to this House by my colleague Rodney Hide. It is another common-sense bill. Tonight we have had two ACT members' bills, and both are good, common-sense measures. ACT supports the Treaty of Waitangi, which has three very good principles. The first is single sovereignty. New Zealand was established with single sovereignty. The second key aspect, article 2, is all about the establishment, the maintenance, and the protection of property rights. It essentially abolished slavery; no longer could one have conquest by might. New Zealand had clearly established property rights. The third aspect is one law for all. That is article 3. In fact, Hobson's specific words to every signatory party who came to sign that treaty were: ``We are all now one.''

Therein lies the nonsense and the myth of this concept of partnership, which was actually created by our judiciary---Lord Cooke of Thorndon and a few others---in 1987. Because from 1840 onwards, we were all part of the Crown. The Crown is us; we are the Crown. Two partners came together, and from thenceforth we were all one. But since 1987 we have created this myth of somehow being in partnership. But how can one be in partnership with oneself? That is the nonsense of New Zealand in contemporary times. We are arguing amongst ourselves, because we are trying to pretend we are in partnership with ourselves! That is a nonsense.

Of course, the other great myth created in the mid-1980s by Lord Cooke of Thorndon, and others at the time, was this idea of the ``principles of the treaty''. Opposition parties have now been trying for 3 years to get just one Minister of the Crown to tell us what the principles are. They cannot seem to do it---not one Minister. I have written to every Minister who has had legislation passed that makes reference to the ``principles of the Treaty of Waitangi''; and members would be interested to read the responses. Not one has been able to tell me what those principles are. It is a bit like the emperor's new clothes: we all pretend they are there, but no one actually knows where they are.

What really is behind this very sensible bill is the fact that since 1975, when the Treaty of Waitangi settlement process commenced, we have had 956 claims brought---between 1975 and 2001. The average settlement rate, through that 27 years, has been one a year. We have been settling one grievance a year. We have 956 claims before us, and a quick maths calculation tells us that we have 956 years of claims before us, assuming that no more are lodged. I am referring to the new ``contemporary claims'' that the Attorney-General was talking about. We face at least 956 years of process settlement---a process that is tearing the country apart.

ACT says that this self-perpetuating gravy train is not solving the problem; rather it is becoming the problem. The diversion of resources to vested interests---the lecherous lawyers and consultants who are riding this self-perpetuating gravy train---is creating division in this country. ACT says, let us set a timetable as a

nation. Let us accept that we are in partnership with each other, and let us set a timetable and make a serious commitment to settling the process.

I acknowledge that the Crown did transgress. The Crown breached article 2---no question about that. The Crown stole property rights. I might add, the Crown is stealing property rights today, using the Resource Management Act as its principal tool, in today's terms---confiscating private property rights by stealth. But if one really respects property rights, then one will acknowledge that where the Crown has transgressed, those matters must be settled.

This process is all about justice. Because justice delayed is justice denied. But some want this to go on into the never-never.

CLAYTON COSGROVE (NZ Labour---Waimakariri): I congratulate the members of this House who have opposed this bill. It is interesting to see that there is quite a degree of unanimity. This bill is not about resolving differences. This bill is a typical, Rodney Hide quick-fix, tabloid-style stunt. ACT members get up and talk about nationhood, and as my colleague Mr Tamihere said, the only thing that the ACT party would know about---

Rodney Hide: He's a boy racer.

CLAYTON COSGROVE: There is old ``spongy pud'' again. He cannot pull his head in. There he goes again. The only thing the ACT party knows about nationhood---and ``spongy'' knows this---is that it sells off nations. Mr Hide is the self-confessed expert in everything. Now he is an expert on M-aori issues. Now, the great economist, the only trained economist in Parliament, with a degree in zoology, is an expert on M-aori issues! This is the man who was asked, I am told, to go and consult for a great nation about economic policy---so I am told. He is the only trained economist in Parliament! What nation on earth would get this great man to come and consult for them on economic policy and such issues? Did Germany call? Did a great nation like the United States call? Did Russia call? Did Great Britain call? No. Albania called.

Mr Hide went from Fiji to Albania, and what do Fiji and Albania have in common? There is an IMF report that shows that in 1997 Albania nearly fell over as a country because of pyramid schemes. I suggest that Mr Hide might like to get together with Mr Worth because they both know a lot about pyramids, I am told.

This bill is typical showmanship by Mr Hide. He has consulted no M-aori on this. I will tell members of the only M-aori Mr Hide has ever talked to since he came to this place, and that was one Sydney Taare, who got ripped off at a fraudulent investment conference that Mr Hide attended---and what did Mr Hide do when he talked to him? He intimidated him. He bullied him. Mr Taare is the only M-aori person Mr Hide has ever consulted.

This bill is about arrogance. This bill is about everything that the ACT party stands for and everything that the people of New Zealand have rejected: the arrogance, the lack of depth, and the lack of policy. What does ACT get in the polls? It gets 8 percent. So this is not credible.

Rodney Hide: Don't hold back!

CLAYTON COSGROVE: I am pleased that the member is here. So are a whole lot of us on this side of the House. We are going to do the member slowly. Mr Hide is a self-confessed expert. What does he do with great issues like the treaty and our constitution? He trivialises them. I pay tribute to members who have made some significant contributions to this debate. But Mr Hide trivialises it. He says, in his own way, that if we ram through a deadline, tell the people of New Zealand that there is a deadline, and that we will fix

the issue, then it will be resolved.

Some people in New Zealand criticise the treaty process because there is a lot of talk. Some would say that there is a lot of hot air and a lot of negotiation that never ends. But I say that there is only one alternative to talk, negotiation, and democracy, and that is the point of a gun, as we see in Zimbabwe. I would rather have talk, hot air, and negotiation until we get a real and lasting settlement with Māori people---a settlement that is a partnership---than some quick-fix, slipshod, tabloid-style deal that Mr Hide promotes.

The fact that Mr Hide put the bill forward should warn every New Zealander that it is dodgy. Mr Hide's whole career is littered with the bodies of people he has tried to tear down. His whole career is not littered, though, with sound policy and attempts to propose solutions.

This bill is not a solution. It is an election pamphlet. That is what it is. It is a campaign pamphlet. Mr Hide knows that. Mr Hide has been away for a while. He has a tan. He has been to some Pacific island somewhere, no doubt. He has come back here, and this bill is the best he can do after 6 years in this place. Whom has he consulted? No one, except, probably, his fat-cat mates! Maybe Alan Gibbs has a view on this bill; I am sure he has. We know that Mr Hide has `the gift of the Gibbs''!

Whom has Mr Hide consulted? Where is his research? Where is his background? Where is the depth? Has he cited one Māori leader or one significant Pākehā leader who has stood up and endorsed this election pamphlet? Not one! Yet Mr Hide comes into this House---a proud House with a magnificent tradition---and tries to put one across people on all sides. He has been dealt to tonight.

RODNEY HIDE (ACT NZ): I have to say that I was telling Mike Moore not to worry too much, because I was sure that Clayton Cosgrove would get better. But I have to say that Mike Moore is a bitterly disappointed man, and tonight we can see why he is such a bitterly disappointed man. Mike Moore said: ``What did you do to him, Rodney?''.

Hon. Chris Carter: I raise a point of order, Madam Speaker. I know that you have shown great generosity of spirit in allowing a wide-ranging debate, but we have yet to hear from Mr Hide anything about the bill.

Hon. Ken Shirley: We sat here and listened to Clayton Cosgrove use his entire speech, without addressing the bill, to give a tirade and berate my colleague, who did not respond. We did not interject. We sat here in silence and listened to that tirade. For that member, Chris Carter---he was a junior whip; he has some other position now---to get up and make that claim is an outrage. Mr Hide should have the right to respond to that tirade.

Madam DEPUTY SPEAKER: I tell Mr Shirley that I am certainly ruling in his favour. Mr Carter should not interrupt a member's speech when a degree of robustness had been tolerated previously. I ask Mr Hide to continue.

RODNEY HIDE: Thank you, Madam Speaker. That is a timely ruling because I am going to spend as much time on Mr Clayton Cosgrove's contribution as it deserves. The purpose of the bill, as I explained in my first speech, is to set up a timetable for settling claims. I understood from the discussion that was occurring in this House that people felt that a speedy resolution was a good idea, and that they were worried about the need for talk and consultation---which, I think, is the Labour Party's position, United Future's position, and, I think, the Green Party's position. They will, no doubt, vote accordingly.

I do, however, offer a caution. If we do not set ourselves some

targets, then, as my colleague Mr Ken Shirley, says, this process will go on for hundreds of years. I ask the House to consider where the justice is in that. In fact, all legal codes and all legal systems have a statute of limitations for a very important reason.

The second matter I want to draw to the attention of the House is an important point: a contribution made by my colleague Derek Quigley, and it concerned a council of race relations. It is a very odd thing for the ACT party to be promoting a new council or a new quango, but this is an important one that would be set up to advise the Prime Minister and to consult New Zealanders.

We have a problem in this country about how we interact as different ethnicities and different racial groups, particularly given historical grievances. I do not think that we can say in this House that we have achieved a good result. It is a very interesting and important function to set up such a council of eminent persons to investigate this matter, advise the Prime Minister, and advise this House.

Are we really going to live in a society where a person can spot a taniwha between Auckland and Hamilton, and stop the building of a motorway? It might be the case, but I do not remember discussing it in this House. I do not remember discussing it when the Resource Management Act was going through, and I ask Labour Party members whether it is their view that a taniwha can stop the building of a motorway.

Darren Hughes: It has nothing to do with the Treaty of Waitangi settlement process.

RODNEY HIDE: I am talking about the functions of the council---in clause 7. That is where we need some hard thinking in this great country of ours. I think that the functions of such a race relations council would go a long way. I have often wondered why graduates of Waikato law school could never get jobs. I have never been able to understand that. I heard the Attorney-General talk today, and I now understand. That former professor, the Attorney-General, said that we have one law in New Zealand, and her explanation for one law was that it is all made in Parliament. I would like to see some jurisprudential evidence of that little line. She then went on to say that we have one law but it is applied to different people differently. This is a remarkable development in the history of jurisprudence. George Orwell could not have thought that one up---that is, in New Zealand we will have one law but it will apply to different people differently! I ask Clayton Cosgrove whether that his is understanding of what ``one law'' means.

Clayton Cosgrove: I do, but the member doesn't.

RODNEY HIDE: He does! No wonder Mike Moore is so bitterly disappointed! ``One law'' means one law applied to everyone the same, without regard to race, religious beliefs, or creed. That is an ideal we should cling to and hold dear to. That is what this bill is about. I ask the House to let a committee consider it.

A party vote was called for on the question, That the Treaty of Waitangi (Final Settlement of Claims) Bill be now read a first time.

Ayes 36

New Zealand National 27;

ACT New Zealand 9.

Noes 81

Labour 52;

New Zealand First 13;

Green Party 9;

United Future 7.

Majority against: 45

Motion negatived.