MAORI ELECTORAL OPTION REPORT

WAITANGI TRIBUNAL 1994

Maori Electoral Option Report

(Wai 413)

Waitangi Tribunal Report: 7 WTR

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Original cover design by Cliff Whiting,
invoking the signing of the Treaty of Waitangi and the
consequent development of Maori-Pakeha history interwoven in
Aotearoa, in a pattern not yet completely known, still unfolding

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The references in the text of this report are to the tribunal's record as contained in the Record of Proceedings and the Record of Documents listed in appendix 2.

For example:

(A5:29) refers to Document A5 at page 29 in the Record of Documents.

The Honourable Minister of Maori Affairs
Parliament Buildings
WELLINGTON

Te Minita Maori

Tena koe e te rangatira

This report concerns the exercise by Maori of the Maori Electoral Option under section 76 of the Electoral Act 1993. The Crown has provided certain funding and services to Maori to assist them to promote enrolment of their people and to gain an understanding of the nature and implications of the choice they are required to make. The claim concerns the adequacy of the funding in terms of the Crown's Treaty of Waitangi obligations.

The claim is brought by Hare Wakakaraka Puke on behalf of himself and those Iwi and other Maori authorities who attended a Maori Electoral Option hui at Turangawaewae on 14 January 1994. The claim is supported by the three pan-Maori national organisations, the National Maori Congress, the New Zealand Maori Council and the Maori Women's Welfare League.

Urgency was accorded the hearing of this claim as the two-month period during which Maori are required to exercise their electoral option runs from 15 February to 14 April 1994. It was clearly important that the tribunal should hear the claim and report to you before the option period began. This we now do. The report is embargoed from public release until 12 pm Monday 14 February 1994.

Our findings and recommendations are recorded in Chapter 5 of the report.

Chapter 1

The Claim

1.1 Introduction

This claim arises out of the proposal for the introduction of the Mixed Member Proportional System (MMP) resulting from the referendum held under the Electoral Referendum Act 1993. As a consequence the Maori Option Notice 1993 was made by the Minister of Justice on 17 December 1993 and published in the *Gazette* dated 22 December 1993. The Notice was made pursuant to sections 77(2) and 269(2) of the Electoral Act 1993. It declared that the two month period required under section 76(1) of the Electoral Act 1993, in which Maori may elect whether to register on the Maori roll or the General roll, would begin on 15 February 1994 and close on 14 April 1994.

1.2 National Hui at Turangawaewae

Following the publication of the Maori Option Notice on 22 December 1993 a national hui was called to be held at Turangawaewae to discuss the issues and process that surrounded the option. The publication of the Notice so close to the Christmas-New Year holiday period made it impossible for Maori to meet at Turangawaewae before 14 January 1994. Although the notice was necessarily short, between 250 and 300 people attended throughout the day. The attendance of the presidents of the National Maori Congress, the New Zealand Maori Council and the Maori Women's Welfare League who addressed the hui signified the importance of the gathering. The claim now before the tribunal is a direct outcome of the hui.

1.3 The Claim

The claim is brought by Hare Wakakaraka Puke on behalf of himself and those Iwi and other Maori authorities who attended the hui which was chaired by Mr Puke. It is strongly supported by the National Maori Congress, the New Zealand Maori Council and the Maori Women's Welfare League. The Statement of Claim was filed with the tribunal on 19 January 1994 (see Appendix 1). In essence, the claim is that the Crown has an obligation under the Treaty of Waitangi to protect the right of Maori to be represented in Parliament and that there are special needs in promoting Maori enrolment and education on the option. The claimants say that the funding so far provided by the Government to assist with these matters is inadequate and insufficient to properly inform Maori of their democratic entitlement and responsibilities. They also claim that the policy for promoting these activities should be formulated and funded independently of state agencies and directed through Maori organisations.

1.4 An Urgent Hearing

On 19 January 1994 the claimants sought an urgent hearing of their claim on the grounds that the two month Maori option began on 14 February. If the claim proved to be well-founded it would need to be heard and determined before that date to ensure that any additional funding was effective.

The tribunal considered an urgent hearing warranted and convened a hearing at the

Maori Land Court, Rotorua, on Thursday 27 January 1994 to hear the claimants' evidence, which was completed on Friday 28 January. The Crown's submissions were heard on Wednesday 2 February.

The tribunal is grateful to counsel for the claimants, Professor Margaret Wilson and Mr Hamish Hancock, and to Crown counsel, Mr Peter Andrew and Ms Helen Aikman, for their co-operation and assistance in the hearing of the claim at very short notice.

Chapter 2

Maori Representation in Parliament: An Historical Overview

2.1 The Treaty of Waitangi

The 1986 Royal Commission on the Electoral System said that the Treaty of Waitangi "marked the beginning of constitutional government in New Zealand. Under the terms of the Treaty, the Crown formally recognised the existing rights of the Maori and undertook to protect them. It is in this sense that Maori people have a special constitutional status ...." (A1:81). That point was repeated by counsel for the claimants in our hearing (A3:8). In examining the place of Maori in our electoral system, we too must begin with the Treaty.

Relevant principles of the Treaty for this claim will be discussed in the next chapter. Here it will be sufficient to comment briefly on the terms of the Treaty, in the English and Maori texts, in so far as they are relevant to later discussion of this claim.

In article 1 the Maori signatories ceded sovereignty, or, in the Maori text, kawanatanga (governance), to the British Crown. In recent years, the cession of sovereignty has been seen as less than absolute (*Ngai Tahu Report* [1991] Vol. 2, 236). As Professor Kawharu told the Waitangi Tribunal in 1984:

> what the chiefs imagined they were ceding was that part of their mana and *rangatiratanga* that hitherto had enabled them to make war, exact retribution, consume or enslave their vanquished enemies and generally exercise power over life and death (*Kaituna River Report*, [1984], 14).

Of course the right to kawanatanga does include the right of Parliament to legislate, as it has done over the years in relation to Maori representation in Parliament.

In the English text of article 2, the Queen guaranteed Maori "the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties ...." However, the Maori text guaranteed somewhat more in that "te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa" amounts to more than mere ownership or possession of lands and other properties. It includes chiefly control over those resources and the people they sustained. Taonga, translated as properties in the English text, included more than merely tangible objects, even, as the tribunal pointed out in its *Te Reo Maori Report* (1986), the taonga of language. This should be read with the Preamble of the Treaty which uses broader language, saying in the English text that the Queen was "anxious to protect their just Rights and Property", and in the Maori text "kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua". The English text promises to protect their just rights *and* property; the Maori text promises to protect Maori chieftainship *and* their land, as Professor Kawharu pointed out in a retranslation of the Maori text into English[1]. The precise meaning of tino rangatiratanga in the Treaty and its relationship to the kawanatanga that was ceded in article 1 has been much

debated.[2] Some have argued that tino rangatiratanga was a guarantee of Maori sovereignty; others a right to self-determination; others again a right of self-management. The difficulty is that no one of these English constitutional terms properly captures the Maori meaning - or meanings - of tino rangatiratanga, a term that is eminently adaptable to time and circumstance. But if we look beyond the strict literal meaning of the Treaty to its broader principles, it is clear that the exercise of tino rangatiratanga, like kawanatanga, cannot be unfettered; the one must be reconciled with the other (*Ngai Tahu Report* [1991], Vol. 2, 237). In constitutional terms this could be seen as entitling Maori to a measure of autonomy, but not full independence outside the nation state that they helped to create in signing the Treaty. This qualified autonomy can take various forms, including separate Maori representation in the New Zealand Parliament.

It is also an article 3 right, as the claimants have argued and the Crown has admitted. In article 3 the Queen, in consideration for Maori acceptance of the previous articles, extended to Maori "Her royal protection and imparts to them all the Rights and Privileges of British Subjects". The franchise, however qualified it might have been in the mid-19th century, was undoubtedly a right and privilege of a British subject. As will be explained below, Maori came to receive this right through the Maori Representation Act 1867.

2.2 The Beginnings of Maori Representation in Parliament

In the early years of the colony neither Maori nor the Pakeha colonists were represented in government. In November 1840, when New Zealand was separated from New South Wales, a Crown colony system of government was established, with a Governor appointed by and responsible to the Secretary of State for the Colonies in Britain, and Legislative and Executive Councils nominated by him and consisting largely of his officials. The colonists agitated for self-government which was conceded, at least in principle, with little delay. In 1846 the British Parliament passed a New Zealand Constitution Act which provided for a complicated three-tier system of government, with elected municipal corporations, two elected Provincial Councils and a General Assembly composed of an elected House of Representatives and a nominated Legislative Council. The franchise was confined to adult males who occupied a tenement and could read and write English. At this time the settler population amounted to some 13,000, about a fifth of the Maori population. But Governor Grey refused to bring the constitution into operation because it disfranchised virtually all Maori. Though many of them were now literate in their own language, very few could read or write English (A2:12). A new, less complicated constitution was introduced under the New Zealand Constitution Act 1852. This provided for a two-tier system of government, with six elected Provincial Councils, each headed by an elected superintendent, and a General Assembly, again with an elected House of Representatives and a nominated Legislative Council. It granted the franchise to all males over 21 who had a freehold estate within an electorate valued at 50 pounds, or a leasehold with an annual value of 10 pounds, or a tenement with an annual rental of 10 pounds in a town or 5 pounds in the country. Adult Maori males were not specifically excluded and in early elections to Provincial Councils and the General Assembly a few voted for European candidates. However, in 1859 the Law Officers of the Crown were asked for an opinion on Maori eligibility and reported that Maori property, being communal, and Maori "tenements", which were impermanent, did

not meet the required conditions for the franchise.

By this time the colonists had gained almost complete control of government. The British Parliament had passed a New Zealand Constitution Amendment Act in 1857 which gave the New Zealand Parliament authority to amend all but a few entrenched sections of the 1852 Constitution Act. In the 1860s responsibility for native affairs was gradually transferred from the British to the Colonial Government. One consequence of this was the passage of the Native Land Acts of 1862 and 1865 which abolished Crown pre-emption and provided for individualisation and registration of Maori land titles, prior to alienation to settlers. The legislation also seemed to offer a way out of the franchise dilemma. However, it was likely to be a long time before a significant number of Maori males had registered individual titles which qualified them for the vote, more especially as large parts of the North Island were still in the throes of war.

It was in this context that Parliament explored other short-term expedients. In 1867 Maori representation was proposed as a way of balancing North Island representation against demands of South Island goldminers for representation. Donald McLean, Superintendent of Hawke's Bay, introduced a Maori Representation Bill that proposed three Maori seats in the North Island and one in the South as "compensation" for two new seats for the Westland miners that were proposed in a separate bill. Both were passed.

The Maori Representation Act 1867 provided for the division of the North Island into three electorates: one north of Auckland, the other two bisected by a line running down the centre of the island. The whole of the South Island, Stewart Island and adjacent islands were included in the fourth seat. This division has remained substantially unchanged except that in 1954 the Southern Maori seat was extended into the south and east of the North Island. The franchise was granted to Maori males 21 and over, including half-castes, but excluding any who had been "attainted or convicted of any treason felony or infamous offence" - a provision that was intended to exclude rebels against the Crown but which gradually ceased to operate. Section 6 of the Act specified that the representatives were to be chosen by and from the eligible electors; in other words they were to be Maori or half-castes. The Act thus allowed an adult male franchise, free of property qualifications, some years before this was allowed to Pakeha. Moreover, Maori who had the required property qualifications could also vote in the general seats where they held that property - and a few did so, until the privilege was abolished in 1896. At this time European men also had dual votes, being entitled to vote in all electorates where they held the necessary property. Although Maori had gained an adult male franchise, they had to exercise this over four electorates. On a population basis some 50,000 Maori had been given four seats, whereas the Europeans, who numbered some 250,000 at this time, had 72 seats. Finally, the Act was to remain in operation for five years. In fact, due to the pressure of Maori members, the Act was renewed for another five years in 1872 and, at the end of that period, it was renewed indefinitely.

2.3 Maori in Parliament Since 1868

It took some time to bring the 1867 Act into full operation. The first election took place in 1868 and, although some 48 polling places were notified, most of these were not used since only two of the seats, Eastern and Southern Maori, were contested, the former being decided by a show of hands at a hui in Napier by 34 votes to 33. But all four of the seats were contested at the next election in 1872 and thereafter the seats were invariably keenly contested (A2:22-4). Another indication of keen Maori interest in elections was the gradual increase in Maori polling stations, usually at the request of local Maori communities. By 1887 over 200 polling places had been established, including some in the remote King Country and Urewera.

In 1872, in response to a motion of a Maori member, two Maori were nominated to the Legislative Council. Thereafter, there were one or two Maori members on the Council until it was abolished in 1950. But in Parliament the Maori members could have little influence. In the early years few of them were competent in English and when they opposed legislation inimical to Maori interests, they were easily outvoted. On the other hand, all four Maori members in the House sat on the Maori Affairs committee, set up in 1872, and here they sometimes had a considerable influence (A2:25-6).

Since the Maori members were often ineffective in Parliament, many Maori thought that they could do better by seeking autonomy outside. Section 71 of the 1852 Constitution Act provided for the setting apart by Letters Patent of districts within which Maori laws, customs and usages not repugnant to general principles of humanity could be maintained "for the Government of themselves, in all their Relations to and Dealings with each other". This could have provided for a form of internal autonomy - which Maori saw as an implementation of the tino rangatiratanga guaranteed to them in article 2 of the Treaty. The Maori King movement sought this form of autonomy in Waikato before the war and in the King Country afterwards. So did the Kotahitanga or "Home Rule" movement which established a separate Maori Parliament in the 1890s. However this was never recognised by the Pakeha Parliament in Wellington, despite efforts by the Maori members to pass an enabling private member's bill. However, Parliament did pass James Carroll's Maori Councils Act of 1900 which gave Maori a very limited form of local government. Even so section 71 of the Constitution Act remained unimplemented; it was finally repealed by the Constitution Act of 1986.

In the meantime Maori had been clinging tenaciously to their representation in Parliament as a last vestige of their lost autonomy - all that was left of the tino rangatiratanga guaranteed to them in the Treaty. In the late 19th and early 20th century better educated, younger Maori entered Parliament. They included James Carroll for Eastern Maori and Hirini Taiwhanga and Hone Heke for Northern, and three university graduates, Apirana Ngata, Te Rangihiroa (Peter Buck) and Maui Pomare. These men could hold their own with any of the European members, used the parliamentary system with great skill, and most of them attained cabinet rank. They helped to ensure the retention of the Maori seats.

Several other developments during this period also helped to entrench the Maori seats. In 1893 Maori as well as Pakeha women got the vote, thus doubling the Maori

electorate. Maori were also given the opportunity, if they were dissatisfied with voting by show of hands, to demand a poll. They could then cast a written vote, if necessary using an interpreter.

In the early years of the 20th century the abolition of the Maori seats was occasionally discussed. There was also some criticism of the primitive system of election, especially voting by show of hands when no poll was demanded, and the consequent lack of secrecy. A Legislative Amendment Act of 1910 abolished voting by show of hands in favour of voting by declaration to a Returning Officer. But this hardly amounted to a secret ballot. Moreover there was not yet any Maori roll. An act of 1914 which provided for the preparation of Maori rolls was a dead letter for 35 years, largely because enrolment remained voluntary. Each time the matter was broached, the Chief Electoral Officer replied that the time was not "opportune" for compulsory registration (A2:37).

It was not until 1937 that the secret ballot, first used for the European seats in 1870, was applied to the Maori seats. Though the government promised to prepare Maori electoral rolls for the 1938 election they were not ready until the 1949 election, largely because of the war. After World War Two the abolition of the Maori seats was discussed from time to time. Labour, dependent on the four Maori seats for a majority in 1946-9 and 1957-60, made no attempt to abolish them. Nor did National. Though it was unable to win any of the Maori seats, National did heed Maori opinion which was solidly in favour of retention. In 1954 the boundaries were changed to give Southern Maori more voters by bringing it into the southern North Island. The boundary changes meant it was necessary to prepare a new Maori roll. Maori on the old roll were sent re-enrolment cards, to be returned within two months. Only half of them replied, demonstrating that a large proportion of Maori voters are unresponsive to mail-outs from the Electoral Office. By this time the Maori roll was failing to reflect the rapid increase in Maori population of recent years.

In 1965, during a debate on a bill to peg the South Island General seats at 25, while providing for an increase of those in the North Island, the member for Southern Maori, E.T. Tirikatene, pleaded for an increase in the Maori seats to five and for the number of Maori seats to be determined by the total Maori population, like European seats. That plea was to be reiterated numerous times in subsequent years. However, an important change was effected in a 1967 amendment to the Electoral Act which allowed Maori to stand for European electorates (and Europeans to stand for Maori electorates). But it was not until the 1975 election that two members of Maori descent won General seats (A2:81).

Just before the 1975 election an Electoral Amendment Act was passed giving Maori voters, not just candidates, the option of choosing between the Maori and General rolls. The Act defined Maori as including anyone descended from a Maori. The option was to be exercised at each census. There was another important change, long requested by Maori, which based the number of Maori seats on total population, calculated on the basis of all Maori on the Maori roll plus their children under 18. This meant that Maori electorates were to have a similar electoral population to the General electorates, and left open the possibility of an increase - or a decrease - in the number of Maori seats.

But following the change of government after the 1975 election, the number of Maori seats was pegged at four, irrespective of how Maori exercised their option after the 1976 census. However, Maori retained their right to opt between the two rolls after each census. That resulted in a gradual shift of Maori voters from the Maori to the General roll, at least until 1986 when there was a slight reversal of that trend which was continued with the 1991 census. According to figures supplied by the Department of Statistics from the 1991 census, there were 126,723 Maori on the General roll, 87,562 on the Maori roll, and 72,965 Maori eligible to vote not on either roll (A5:29). But this large non-enrolment, plus the fact that there was a lower turnout of voters registered on the Maori roll at successive elections compared with Pakeha voters, meant that the Maori seats, despite continued support for them by articulate Maori opinion, were languishing. Since it was generally assumed by both major political parties that the four Maori seats were in the keeping of Labour, canvassers for both parties had been actively encouraging Maori voters to shift over to the General roll, especially in marginal seats. Thus the Maori seats remained as a lacklustre expression of tino rangatiratanga, with no government willing to grasp the nettle by abolishing them, but equally no comprehensive attempt by government or the Electoral Office to encourage Maori to enrol, even though enrolment was by law compulsory.

2.4 The Report of the Royal Commission on the Electoral System, 1986 and its Aftermath

The Royal Commission on the electoral system was required, among other things, to investigate and report on the nature and basis of Maori representation in Parliament.

In reviewing the history of Maori representation, the Commission noted the failure to implement section 71 of the 1852 Constitution Act and the "failure of successive Governments to recognise and give effect to the Treaty as a basis of constitutional government in New Zealand ...." The Commission went on to make an important observation:

> Although they were not set up for this purpose, the Maori seats have nevertheless come to be regarded by Maori as an important concession to, and the principal expression of, their constitutional position under the Treaty of Waitangi. To many Maori, the seats are also a base for a continuing search for more appropriate constitutional and political forms through which Maori rights (mana Maori in particular) might be given effect. It is because of this that many Maori who opt to go onto the General roll continue to support the retention of the Maori seats. It is in this context that Maori views concerning the seats should be understood (A1:86).

We believe this is an accurate summation of Maori views today. The Commission went on to say that "continued representation in Parliament of Maori rights and interests is essential because of the need to get protective arrangements in place" and that "Maori interests should ... continue to be represented in Parliament by MPs who are also members of the Maori community" (A1:87-8). However, these comments were not an endorsement of the existing separate Maori seats. Rather than endorse the FPP (First Past the Post) system of election, the Commission recommended that Maori representation should become incorporated in a common roll for an MMP (Mixed

Member Proportional) system. But under this system the Commission proposed that "there would be no separate Maori constituency or list seats, no Maori roll and no Maori option," though it did propose to waive the 4% threshold "for parties primarily representing Maori interests" necessary for other parties to gain a proportion of the list seats. Although it did not favour a third system, STV (Single Transferable Vote), the Commission believed that this would offer Maori "more effective representation" than FPP with separate Maori seats (A1:105).

In the referendum on the electoral system in 1992, in response to the first question posed, there was a large majority in favour of changing from the existing FPP system, and, in response to the second part of the referendum, a large majority in favour of MMP from among a range of alternatives. In each case Maori representation was as described or proposed by the Commission. A second referendum was held at the time of the General Election on 6 November 1993 to allow voters to make a further choice between FPP and MMP. Once again, MMP was the preferred option.

In the meantime, however, there had been a change of heart by the Government which, in response to strong Maori pressure, had inserted in the committee stage of the 1993 Electoral Bill provision for the retention of Maori seats - as constituency seats - in the event of MMP being adopted. The Act in effect restored the system briefly in force in 1975 whereby Maori were given the option at each census of enrolling on the Maori or the General roll and the number of Maori seats was to be calculated on the basis of the total Maori electoral population, not just voters on the Maori roll, as with General roll seats. The number of Maori constituency seats could rise or fall, according to the way in which Maori exercised their option. But, since the number of Maori seats had to be calculated before the number of ordinary constituency seats were known, it was necessary for Maori to exercise their option before the next census, due in 1996. The period 15 February to 14 April 1994 was chosen. Though the threshold exemption was now abolished for Maori parties, any that did get beyond the required 4% could also gain list seats.

It was evident that Maori had gained a significant advantage from these concessions - in the event of MMP being adopted. The Maori seats would be assured of a secure place in a new post-MMP constitution, with their number dependent on the number of Maori who opted for the Maori roll and who voted for a Maori party's list seats. If those seats had long been a last vestige of tino rangatiratanga, a substitute for the Maori preferred option of a separate and largely autonomous constitutional arrangement, they were at last accorded a degree of security and permanence. It is perhaps not surprising that the Maori vote for the modified MMP system in the 1993 referendum was somewhat higher than that of voters on the General roll.

References

1. I H Kawharu (ed), *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, 1989, p. 321.

2. Bruce Biggs, "Humpty-Dumpty and the Treaty of Waitangi", in Kawharu (ed), pp. 300-312.

Chapter 3

Treaty Principles

3.1 Introduction

This claim is concerned with the Maori right of political representation in Parliament and with its effective exercise by Maori. Such representation is a fundamental right of New Zealand citizens and is of the highest constitutional importance. The history of Maori political representation has been briefly sketched in the preceding chapter. Under the present electoral law Maori electors have a choice as to whether they wish to be registered on the Maori electoral roll or the General roll. The significance of this choice is heightened by the fact that the former method of determining the outcome of an election was based on the FPP system; it is now determined by MMP. Whereas under the former law, Maori registered on the Maori electoral roll could be represented by only four members of Parliament, under MMP it is possible they could elect up to 12 and possibly more representatives. As a consequence, their influence in the deliberations of the House and, indeed, in the formation and composition of the Government, could be greatly enhanced.

The Maori seats have come to be regarded by many Maori as the principal expression of their constitutional position in New Zealand[1]. They have been seen by Maori as an exercise, be it a limited one, of their tino rangatiratanga guaranteed to them under the Treaty of Waitangi. The prospect of increased political representation under MMP is viewed as an overdue and valuable enhancement of their rangatiratanga.

3.2 The Recent Privy Council Decision

In a recent decision *New Zealand Maori Council* v *Attorney General* (unreported PC 14/93, 13 December 1993) (*Broadcasting Assets*) the Privy Council noted (p.3) that the "Treaty records an agreement executed by the Crown and Maori, which over 150 years later is of the greatest constitutional importance to New Zealand". In a later passage their Lordships, in discussing the principles of the Treaty, said (p.5)

> Both the 1975 Act and the State-Owned Enterprises Act refer to the "principles" of the Treaty. In their Lordships' opinion the "principles" are the underlying mutual obligations and responsibilities which the Treaty places on the parties. They reflect the intent of the Treaty as a whole and include, but are not confined to, the express terms of the Treaty. (Bearing in mind the period of time which has elapsed since the date of the Treaty and the very different circumstances to which it now applies, it is not surprising that the Acts do not refer to the terms of the Treaty). With the passage of time, the "principles" which underlie the Treaty have become much more important than its precise terms.

The tribunal in earlier reports has expressed similar views. Thus in the *Ngai Tahu Report* (1991, Vol. 2, 222-223) it noted that claims:

> fall to be assessed against the "principles of the Treaty" not just the literal terms (s 6). We are not confined to the strict legalities. There are good reasons for this.

> The Treaty itself is a remarkably brief, almost spare, document. It was not intended merely to regulate relations at the time of signing by the Crown and the Maori, but rather to operate in the indefinite future when, as the parties contemplated, the new nation would grow and develop. As we have said elsewhere (*Orakei Report* [1987], 137), the broad and general nature of its language indicates that it was not intended as a finite contract but rather as a blueprint for the future. As Sir Robin Cooke has said, "What matters is the spirit".

3.3 Article 3 of the Treaty

The claimants rely primarily on article 3 of the Treaty, the effect of which they claim is to grant full citizenship rights, including those of political representation. Article 3 states:

> In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

Counsel for the claimants rightly observe that the rights and privileges of British subjects in 1840 were somewhat limited for most people in the context of citizenship. Moreover they were not the same for all citizens. As we have noted in the previous chapter, the franchise for the House of Representatives was granted to all males over 21 with freehold or leasehold estates of specific value in the New Zealand Constitution Act 1852. This provision did not exclude Maori males who owned the specified freehold or leasehold interest in land. But, since almost all Maori property was held communally, few were able to vote. Maori and Pakeha females alike were also disenfranchised. Clearly, all British subjects were not treated equally in terms of the right to vote. As is well known women in New Zealand in 1893 were the first British subjects to acquire the right to vote. In the case of Maori almost all remained disenfranchised until the passage of the Maori Representation Act 1867, which provided for the election of four members of the House of Representatives to represent the Maori race, one each from four electorates. Maori of 21 years and upwards including half-castes were eligible to vote. Thus was enacted a separate form of representation for Maori which has persisted to the present day. The fact that it is, and has been since 1867, different from that of Pakeha representation, does not mean that it is not embraced by article 3 of the Treaty. On the contrary, the extension to Maori under article 3 of all the rights and privileges of British subjects must necessarily include the rights of political representation conferred from time to time on Maori by the New Zealand legislature. While article 3 speaks of British subjects it necessarily extends to all Maori who are New Zealand citizens and eligible to vote. It is difficult to imagine a more important or fundamental right of a citizen in a democratic state then that of political representation. This right is clearly included in the protection extended by the Crown to Maori under article 3. It is presently found in the Electoral Act 1993 which enables Maori to choose whether to enrol on the Maori roll or the General roll for elections now to be conducted on the basis of MMP.

3.4 Privy Council Discussion of Treaty Principles

In submissions to the tribunal both counsel for the claimants and for the Crown invoked

and relied on certain parts of the following passage in the judgment of the Privy Council in the recent *Broadcasting Assets* case. This passage follows immediately after the earlier cited passage in which their Lordships discuss the principles which underlie the Treaty:

> Foremost among those "principles" are the obligations which the Crown undertook of protecting and preserving Maori property, including the Maori language as part of taonga, in return for being recognised as the legitimate government of the whole nation by Maori. The Treaty refers to this obligation in the English text as amounting to a guarantee by the Crown. This emphasises the solemn nature of the Crown's obligation. It does not however mean that the obligation is absolute and unqualified. This would be inconsistent with the Crown's other responsibilities as the government of New Zealand and the relationship between Maori and the Crown. This relationship the Treaty envisages should be founded on reasonableness, mutual co-operation and trust. It is therefore accepted by both parties that the Crown in carrying out its obligations is not required in protecting taonga to go beyond taking such action as is reasonable in the prevailing circumstances. While the obligation of the Crown is constant, the protective steps which it is reasonable for the Crown to take change depending on the situation which exists at any particular time. For example, in times of recession the Crown may be regarded as acting reasonably in not becoming involved in heavy expenditure in order to fulfil its obligations although this would not be acceptable at a time when the economy was buoyant. Again, if as is the case with the Maori language at the present time, a taonga is in a vulnerable state, this has to be taken into account by the Crown in deciding the action it should take to fulfil its obligations and may well require the Crown to take especially vigorous action for its protection. This may arise, for example, if the vulnerable state can be attributed to past breaches by the Crown of its obligations, and may extend to the situation where those breaches are due to legislative action. Indeed any previous default of the Crown could, far from reducing, increase the Crown's responsibility.

Counsel for the claimants submitted on the basis of the foregoing passage that the nature of the Crown's Treaty obligation to protect the citizenship rights of Maori amounts to a guarantee by the Crown, but that such obligation is not absolute and unqualified. While their Lordship's comments were perhaps directed principally at the article 2 provisions they would appear to apply equally to article 3, as the Crown undertaking to protect and preserve Maori property (including the Maori language) as part of taonga was in return for the Crown being recognised as the legitimate government of the whole nation by Maori. In article 3 the Queen, in consideration of the concessions made to the Crown in articles 1 and 2, extends to Maori her royal protection and imparts to them all the rights and privileges of British subjects. The Crown's obligation to protect those rights, which today include the Maori rights to political representation in the Electoral Act 1993, is readily apparent.

That there is such a duty on the Crown was conceded by Crown counsel who submitted, after citing the foregoing passage from the Privy Council judgment, that the Crown's obligation to protect Maori citizenship rights and rights to equality is similarly not an unqualified one. He contended that the obligation rests on the Crown to take such steps

as are reasonable having regard to, for example, economic and social circumstances. We will return to this contention later in Chapter 4 of this Report.

3.5 Principles Articulated by the Privy Council

In the passage cited from the judgment of the Privy Council in 3.4 their Lordships have articulated two Treaty principles. The first is the obligation of the Crown to protect rights conferred on Maori under the Treaty. The second is that the relationship between Maori and the Crown envisaged by the Treaty should be founded on reasonableness, mutual co-operation and trust. This relationship was expressed by the Court of Appeal as arising from the partnership which the Treaty signified. In summing up the findings of the Court of Appeal in the *New Zealand Maori Council* case, Sir Robin Cooke noted that, approaching the case independently, all members of the Court had agreed that:

> ... the principles require the Pakeha and Maori Treaty partners to act towards each other reasonably and with the utmost good faith[2].

The tribunal has referred frequently to the Treaty principle which requires the Crown actively to protect Maori Treaty rights. One example from the *Manukau Report* (1985) will suffice:

> The Treaty of Waitangi obliges the Crown not only to recognise the Maori interests specified in the Treaty but actively to protect them. The possessory guarantees of the second article must be read in conjunction with the Preamble (where the Crown is "anxious to protect" the tribes against the envisaged exigencies of emigration) and the Third Article where a "royal protection" is conferred. It follows that the omission to provide that protection is as much a breach of the Treaty as a positive act that removes those rights.[3]

There can be no doubt that the obligation on the Crown actively to protect Maori Treaty rights extends to the rights protected under article 3 and in particular to the right of Maori political representation, which is one of the most important rights, if not the most important, included in this article.

In the same way the tribunal has on various occasions applied the partnership principle enunciated by the Court of Appeal in the *New Zealand Maori Council* case.[4] It is clearly applicable in the present case.

3.6 The Treaty Guarantee of Maori Rangatiratanga

In addition to relying on the provisions of article 3 and the obligations of the Crown as enunciated by the Privy Council in the *Broadcastings Assets* case, counsel for the claimants also invoked the Crown guarantee to Maori under the Treaty of their tino rangatiratanga more particularly stemming from the Maori text of the Treaty. It was claimed that rangatiratanga embraces the right of self-determination which, in the context of this claim, means the form and nature of political representation which gives Maori the maximum control over their political representation that is consistent with the provisions of the Electoral Act 1993. The Maori seats, it was submitted, represent the closest form of political self-determination currently available to Maori. Therefore, it

is claimed, the Crown is under an obligation to ensure all is done to enable Maori to achieve the maximum number of Maori seats through the exercise of the imminent Maori electoral option. Counsel for the claimants recognised that the Crown's obligation is not absolute and unqualified but, in the words of the Privy Council (p.5), it must be "reasonable in the prevailing circumstances".

This claim, which appears to be based on article 2 of the Treaty, was raised for the first time by claimants' counsel in her closing address after Crown counsel had completed his submissions. It raises issues of some complexity which require fuller amplification and full discussion by both counsel for claimants and the Crown before the tribunal could form a concluded opinion on the matter.

It may for instance also be arguable that the provisions in the Electoral Act 1993 greatly enhancing the extent of political representation of Maori in Parliament and, hence, the rangatiratanga of Maori, constitute a taonga in terms of article 2 of the Treaty and are entitled to Crown protection on that account also. But this possibility was not raised before us and we accordingly express no opinion on it.

3.7 International Covenants and Conventions

Counsel for the claimants in her opening submission drew to the notice of the tribunal various international covenants and conventions concerned with human rights, civil and political rights and racial discrimination. She also emphasised the draft United Nations Declaration on the Rights of Indigenous Peoples which is concerned with the autonomy and right to self-government of indigenous peoples. In an affidavit filed in evidence Sir Paul Reeves refers to the growing relevance and importance of this development. However, it remains to be seen what final form the draft declaration ultimately takes. As Crown counsel pointed out it is, at present, a draft document only.

3.8 Findings on Treaty Principles

The tribunal finds that the Crown is under a Treaty obligation actively to protect Maori citizenship rights and, in particular, existing Maori rights to political representation conferred under the Electoral Act 1993. This duty of protection arises from the Treaty generally and in particular from the provisions of article 3.

The tribunal further finds that the partnership relationship the Treaty envisages should be founded on reasonableness, mutual co-operation and trust. The Crown in carrying out its obligations is not required, in protecting Maori citizenship rights to political representation, to go beyond taking such action as is reasonable in the prevailing circumstances.

References

1. *Report of the Royal Commission on the Electoral System,* Government Printer, 1986, para 3.99.

2. *New Zealand Maori Council* v *Attorney-General* [1987] 1 NZLR 641, (CA) 667.

3. *Manukau Report* (1985), 70. For other examples see for instance *Orakei Report* (1987), 191; *Te Reo Maori Report* (1986), 21; *Ngai Tahu Report* (1991), Vol. 2, 240.

4. See for instance *Muriwhenua Fishing Report* (1988), 192; *Ngai Tahu Report* (1991), Vol. 2, 242-3.

Chapter 4

The Crown's Funding Proposals

4.1 Introduction

Having settled the relevant Treaty principles which are applicable to the circumstances of this claim, it is necessary now to examine the funding proposals of the Crown to determine whether, in the prevailing circumstances, they afford reasonable protection to Maori rights to political representation under the Electoral Act 1993 with particular reference to the Maori Electoral Option to be exercised between 15 February and 14 April 1994. In short, the question is whether the Crown has allocated sufficient resources to meet its Treaty obligations.

At the outset of his submissions Crown counsel cautioned the tribunal that the allocation of resources is inherently a political matter and one of the principal functions of executive government. He referred to it as a complex task, involving a constant assessment and reassessment of priorities, a consideration of the current economic circumstances and the demands of remaining accountable to all New Zealand citizens. The tribunal, he suggested, should be very cautious in reviewing decisions involving the allocation of resources; the jurisdiction of the tribunal, he submitted, is confined to assessing breaches of the principles of the Treaty.

The tribunal accepts that the allocation of resources is inherently a political matter and an important task of executive government. We also accept that our jurisdiction is largely confined to assessing breaches of Treaty principles. In this case, however, it is clear that the Crown has a duty in terms of the Treaty principles we have discussed to allocate resources by way of funding to ensure as far as it reasonably can that Maori are enrolled and are adequately informed on the issues relevant to the exercise of their option as to which roll they wish to be registered on. Whether the Crown, in making the financial and other provisions it has, has acted in breach of Treaty principles is the very question before us. We are required to make an assessment on the evidence before us as to whether the Crown has allocated sufficient resources to meet its Treaty obligations.

That there is a need for government funding was acknowledged by Crown counsel who told us that the Crown is committed to encouraging and promoting Maori participation in the electoral process. That there are special needs and problems associated with the current level of involvement by Maori is acknowledged by the Crown. The provision of resources by the Crown towards specific Maori awareness campaigns over the last 18 months was cited by Crown counsel as an express acknowledgment of the difficulties of ensuring that Maori play a full role in the electoral process. The tribunal acknowledges, as have the claimants, the past contribution made by the Crown. We have been invited by Crown counsel to have regard to these various past contributions, financial and otherwise, in assessing the reasonableness of the Crown's policy in terms of the principles of the Treaty. It is clear, notwithstanding his earlier cautionary admonition, that Crown counsel expects us to form an opinion on whether or not the Crown

resources specifically targeted at the Maori Electoral Option are reasonable in the prevailing circumstances. In this he is clearly correct. Indeed, having determined the relevant Treaty principles applicable to this claim, it is the very question the tribunal has to determine. Accordingly we now turn to consider that question.

4.2 Crown Action to Promote Greater Maori Participation in the Electoral Process

Crown Counsel submitted that, in assessing the reasonableness of the Crown's policy in terms of Treaty principles, the tribunal should have regard to certain steps that the Crown has taken to promote greater Maori participation in the electoral process. This we now do in the order set out by Crown counsel in his written submission (B1).

(a) ***The establishment of a Royal Commission on the Electoral System***
The Royal Commission on the Electoral System (which included a Maori member) deliberated and reported at length, among many other matters, on the issue of Maori representation in Parliament and participation in the electoral process. Its report, Crown counsel submitted, can be viewed as the genesis of the current reform.

The tribunal acknowledges the great value and influence of the Royal Commission's report. The Commission recommended that MMP be adopted and that the four Maori seats be abolished. The Commission recognised that the abolition of the seats could arouse strong feeling in the Maori community. This proved prophetic. In the event, as a result of the widespread expression of this strong feeling on the part of Maori, the proposal in the Electoral Bill to abolish the Maori seats was revoked. Maori are now required, very soon after the result of the November 1993 referendum and in the relatively short time frame of two months, to decide on which roll they wish to be registered. In so deciding they will face complex issues on which a significant number will need information and education. As many as possible of the up to 60,000 not at present on the rolls will need to be enrolled and similarly informed. It is, by any standard, a major task.

(b) ***Maori Participation in the Electoral Law Reforms***
The provision by the Crown of $374,091 (including GST) to Maori for consultation and the preparation of a submission to the Parliamentary Electoral Law Select Committee.

Evidence on this and later advances by the Crown to Maori was given to the tribunal by Professor Ngatata Love, who is Professor of Management and Dean of Business Studies at Massey University. We record the following from the evidence of Professor Love (A7)

- Professor Love, together with Mr Wiremu (Bill) Katene, co-convenes a Steering Committee which was formed in March 1993 to ensure Maori participation in electoral law reforms. The Steering Committee comprises representatives from all three national Maori organisations: the National Maori Congress, the New

Zealand Maori Council and the Maori Women's Welfare League. The Committee was formed because of concerns that Maori were not properly informed of the implications of the electoral reforms as proposed by the then Electoral Reform Bill which abolished the four Maori constituency seats.

- The Steering Committee was concerned that, despite significant proposed changes to the basis of future representation in Parliament for Maori, very few submissions had been made by Maori to the Electoral Law Select Committee. A critical issue stressed in the Report of the Royal Commission was that there should be adequate consultation with Maori.

- In early March 1993 a paper and proposal "Electoral Reform Bill - Maori Participation" was submitted to the then Minister of Maori Affairs. The proposal was for a concentrated consultation campaign, involving 25 regional hui and one national hui over a four month time frame to 30 June 1993. The intention was to inform Maori of the implications of the Bill, seek feedback and submit that feedback to the Select Committee for its consideration. Funding of $785,250 (including GST) was sought for that campaign.

- The Minister of Maori Affairs declined to offer assistance and submissions were accordingly made to the Minister of Justice who, on 13 April 1993, approved a substantially modified programme for the purpose of:

  - ensuring that Maori were fully and independently informed on the implications of the proposed electoral reforms;

  - obtaining feedback from Maori so that full and complete submissions reflecting that feedback could be made to the Electoral Law Select Committee by 12 May 1993, and

  - ensuring that the Government was aware of the views of the Maori people on the question of Maori representation.

  Funding of $374,091 (including GST) was made available for the campaign.

- The time frame for consultation - 30 days - was extremely short and was limited by time and budgetary constraints. Regional hui were therefore reduced in number from the planned 25, to 18, culminating in a two day national hui at Turangawaewae Marae. Notwithstanding the reduced time frame for consultation, and of necessity, the reduction in the number of regional hui, the Steering Committee was of the view that funding approved for the campaign was insufficient, and approached Te Puni Kokiri, on 15 April 1993, for additional assistance, namely

  - resources to provide constitutional law expertise for the campaign;

  - assistance to host the national hui at Turangawaewae Marae;

The request for assistance was declined.

- The consultation exercise was carried out over a two week period, using three teams, each with three people, to present the issues and receive and document feedback at assigned hui - each team presented at six hui. The national hui at Turangawaewae Marae was held on 4 and 5 May 1993, following which a comprehensive report with recommendations was presented to the Electoral Law Select Committee on 18 May 1993. The Select Committee attended for a time after the hui.

- Professor Love and his colleagues believe the submissions were instrumental in influencing significant amendments to the Electoral Reform Bill, in particular the retention of separate Maori constituency representation under MMP with provision for those seats to vary according to the number of Maori who elect to be enrolled on the Maori roll.

- While the Steering Committee had signalled at the outset that funding of $374,091 was insufficient to carry out this crucial consultation exercise, its ability to complete the task was dependent on both voluntary and subsidised help given by many people, and on the project management and administrative support provided by the Crown/Congress Joint Working Party.

The tribunal notes that this programme, although by no means comprehensive in its coverage, did result in the restoration of Maori constituency seats. But it bore only a marginal relevance to the issue now before Maori - the need to enrol many thousands of unregistered Maori and the exercise of a critically important electoral option.

(c) ***Maori Voter Enrolments: Trial Period***

The next item referred to by Crown counsel was the provision of $65,250 (including GST) to the Steering Committee to undertake a trial voter enrolment programme.

Professor Love (A7) told us

- That during the earlier consultation programme on the Electoral Reform Bill it became evident that large numbers of Maori were not enrolled on either the Maori or General electoral rolls.

- After meetings with officials in the Department of Justice and the Electoral Enrolment Office of New Zealand Post it was clear that the "mainstream" methods used to encourage people to register as electors were not reaching a large percentage of Maori. These mainstream methods included radio and television advertising in non-Maori media and mail drops.

- It was suggested to the Electoral Enrolment Office that a different approach to Maori voter enrolments should be adopted; that approach to be based on Maori infrastructures and networks at whanau, hapu and Iwi level.

- The Electoral Enrolment Office agreed to co-operate and finance a trial project in the Elsdon/Titahi Bay area of Porirua utilising the services and methodology suggested by the Steering Committee. This involved using a project team of young Maori with the ability to tap into the myriad of Maori networks to encourage Maori to enrol as electors.

- The two-week field trial, preceded by a two-week planning period, was conducted in July 1993. It was completed on time with excellent results: 2,018 voters were enrolled; 1,323 were Maori of whom 459 were in the Elsdon/Titahi Bay area (target for this ward being 300). Enrolments were achieved at $28.81 per enrolment, a figure understood to be considerably lower than other methods used in past enrolment campaigns. In addition to the 1,323 Maori some 695 non-Maori were also enrolled.

The tribunal notes that this trial project effectively demonstrated what could be done by the new approach and was a successful pilot study.

(d) ***Maori Voter Enrolments: Further Campaign***
The provision of $100,000 (including GST) to the Love/Katene Steering Committee for the further promotion of Maori enrolment for the 1993 General Election. This was a direct outcome of the successful Elsdon/Titahi Bay trial.

- At the invitation of the Electoral Enrolment Office the Steering Committee, on 5 August 1993, submitted a proposal and budget for undertaking enrolments in some 12 areas. The areas were

South Auckland	Kaitaia
Kaikohe/Moerawa/Kawakawa	Whangarei
Hamilton/Ngaruawahia/Huntly	Te Awamutu
Tokoroa	Taupo
Mt Maunganui	Whakatane West
Gisborne	Hastings/Flaxmere

According to Electoral Enrolment Office statistics Maori voter enrolments were particularly low in these locations, there being some 18,300 Maori who were not enrolled.

- The Electoral Enrolment Office was unable to fund the proposal submitted which aimed to achieve a target of 14,210 enrolments at a cost of $26.15 per enrolment compared with $28.81 for Elsdon/Titahi Bay. Instead the Electoral Office agreed to provide $100,000 (including GST) to cover the following seven locations:

  South Auckland, Hamilton, Whangarei, Kaikohe, Whakatane, Hastings, Gisborne

- This enrolment campaign was based on the kanohi ki te kanohi (face to face)

Maori method. It ran from 16 August to 5 October 1993. Despite the severe funding constraints, results were spectacular with 12,310 enrolments completed at an average cost of $8.12 per enrolment. Of the 12,310 enrolments, 9,061 were Maori of whom 6,471 opted for the Maori roll. In addition there were 3,249 non-Maori enrolments.

- Professor Love attributed the success of the Maori voter campaign to the use of Maori methodology, implemented by Maori, and to the dedication and commitment of a very small project team and voluntary assistance from Maori organisations in the field. He expressed the view that with more resourcing and time, Maori voter enrolment achievements would have been more significant.

(e) ***Maori Voter Information Campaign***
Provision of funding of $320,066 (including GST) by the Electoral Referendum Panel. This was an independent panel (including a Maori member) commissioned by the Government to undertake an impartial education campaign to all voters on the 1993 referendum.

- At the invitation of the panel, the Steering Committee submitted a detailed proposal which involved presenting issues on the referendum to Maori using both contemporary and traditional communications techniques - mass Maori media and kanohi ki te kanohi. The proposal was modified by the Electoral Referendum Panel and the Maori Voter Information campaign (He Whakamarama Poti) was based solely on the kanohi ki te kanohi method and excluded the Maori multi-media approach. Funding was reduced accordingly.

- The Steering Committee undertook to present information to Maori at 60 regional presentation venues (marae and non-marae based). One hundred and thirty-seven presentations were in fact made, with over 6,500 Maori spoken to kanohi ki te kanohi. The use of a special video and discussion package prompted Maori organisations to discuss the issues in other fora, creating a snowball effect.

  Such was the effectiveness of the campaign, the Steering Committee, in its final report to the Electoral Referendum Panel, strongly recommended that the Government use this is a model for future public information dissemination campaigns for Maori.

The tribunal notes Crown counsel's concurrence that the campaign, using Maori methodology, was very successful. While the campaign was concerned with the subject matter of the referendum - that is, the choice between FPP and MMP - and not the Maori option, it was of some relevance to the Maori option and could be regarded as foundation-laying among those Maori who were spoken to.

(f) ***Maori Voter Motivation Campaign***
Provision of $45,000 (including GST) by the Chief Electoral Officer, Department of Justice

- As part of a Voter Motivation campaign undertaken by the Chief Electoral Officer, the Steering Committee was invited to undertake a complementary motivation campaign for Maori voters.

- The Maori Voter Motivation campaign was carried out in tandem with the Maori Voter Information campaign and, in addition, by setting up stalls in key urban shopping malls and shopping centres. Members of the Steering Committee's project team were in attendance at these stalls in Auckland, Hamilton and Wellington to provide information, advice and reference material to members of the public - Maori and non-Maori alike. These activities were covered by the $45,000.

- In addition to those Maori spoken to in the Maori Voter Information campaign discussed earlier, in excess of 4,500 Maori were spoken to in the urban centres. Whanau discussions were generated again creating a snowball effect.

- It appears these campaigns were instrumental in influencing the higher turnout by Maori at the 1993 election. Sixty-four thousand, one hundred and sixty eight Maori on the Maori roll participated in the election compared with 48,995 in 1990. This represents a 30% increase in Maori voter participation compared with only a 2.6% increase in General roll participation.

(g) ***Administrative Costs***

The last item of expenditure in 1993 on behalf of the Steering Committee referred to by Crown Counsel was a sum of $11,453 (including GST), being the cost of providing the Committee, now known as INCO Services, with office accommodation, telephone, fax and related services for the duration of their contract with the Electoral Enrolment Centre to carry out the trial and subsequent wider Maori enrolment campaigns referred to in the preceding sections (c) and (d).

4.3 Conclusions on the 1993 Maori Electoral Campaigns

The tribunal has referred to these various 1993 campaigns carried out by the Steering Committee with the assistance of Government funding for two main reasons. First, Crown counsel urged on us that, in assessing the reasonableness of the Crown's policy in terms of the principles of the Treaty, the tribunal should have regard to the various steps the Crown has taken to promote greater Maori participation in the electoral process.

The various campaigns fell under four heads. The first was concerned with Maori participation in the electoral law reforms and took place in May 1993. While it appears to have contributed to the retention of Maori constituency seats it has no direct or immediate relevance to the Maori Electoral Option about to take place in 1994.

The second category comprised two campaigns, the first a very modest trial and the second somewhat more extensive, both directed at stimulating Maori enrolments. To the extent that they resulted in increased Maori enrolments they have made a modest

contribution to the number of Maori on the roll. Regrettably, it appears that at least 50,000 and as many as 60,000 Maori are not registered as electors.

The third category concerned the Maori Voter Information campaign concerning the November referendum on FPP and MMP. While valuable, it was necessarily limited in the number of Maori who could be reached kanohi ki te kanohi given the available funding.

The fourth category was the Maori Voter Motivation campaign. It reached in excess of 4,500 Maori in addition to those spoken to in the information campaign and no doubt contributed - as did the other campaigns - to the 30% increase in Maori voter participation in the 1993 election compared with the 1990 election. It was not, of course, directly concerned with the forthcoming Maori Electoral Option.

The tribunal believes that, in assessing whether the funding now being made available to Maori in connection with the exercise by Maori of the option is reasonable, limited regard should be had to the 1993 expenditure we have been considering. To varying and unquantifiable degrees that expenditure has raised the consciousness of some Maori to electoral issues including MMP and has directly resulted in some increase in Maori enrolled as electors.

The second reason for our discussion of the various campaigns is because, although restricted in compass, they demonstrated that the Maori methodology of kanohi ki te kanohi campaigning proved to be greatly superior to more conventional means in reaching Maori.

In concluding his evidence, Professor Love stated that, while the Maori option is not new, the link under the MMP system between the numbers on the Maori roll and Maori Parliamentary representation means that the option assumes a significance that did not exist in the past. The Steering Committee considers it essential that Maori are adequately informed of the significance of the option under an MMP electoral system.

The proven methodology used in the earlier campaigns to disseminate information to Maori on what are quite complex issues provides, the Steering Committee believes, the most effective model for informing Maori of this crucial issue.

4.4 Crown Funding for the 1993 Maori Electoral Option

The Crown has made the following provision for funding the Maori Option. This was deposed to by Mr Lloyd Hunt, Business Manager of the Electoral Enrolment Centre of New Zealand Post (B1:B).

A total of $581,000 (including GST) has been allocated by NZ Post for the purpose of the Maori option. From this sum approximately $431,000 will be spent on a direct mail-out to each registered Maori elector advising him or her of the option and how to exercise it. It is said that NZ Post has consulted with INCO Services (the former Steering Committee) on the content and design of the material sent to individual electors and INCO Services has approved the material. Mr Hunt expressed the opinion that since

78.14% of enrolled Maori responded to the 1993 roll revision he expected that at least the same percentage of Maori electors will be reached by and take notice of the Maori option material, replying to NZ Post if they wish to change rolls.

The tribunal notes that a little over 20% of enrolled Maori failed to respond to the 1993 roll revision and presumes that a similar proportion, unless extra steps are taken, are likely to fail to respond on this occasion. The proportion failing to respond may be higher if the recipients are not able to comprehend the full implications of the choice they are invited to make.

It is apparent that many Maori gain a better understanding from an oral communication rather than from written material through the mail.

The tribunal further notes that there are a substantial number of Maori who are not on any electoral roll. The NZ Post mail out will not reach them. There is doubt about the precise number of eligible Maori voters who are not enrolled. Brian Easton, a Research Economist and Social Statistician, has estimated the total number of eligible Maori over the age of 18 as 308,000 (A13:10). The number of Maori registered on the electoral roll was about 248,000. Mr Easton considered the "gap" of 60,000 might be taken as the number of Maori who are unenrolled.

Mr Hunt of the NZ Post Electoral Enrolment Centre gave the number of Maori registered as at 19 January 1994 as 253,252. He stated that on the basis of 1991 Census date the highest possible number of Maori eligible to enrol is 316,000. The tribunal notes that the "gap" between 253,252 and 316,000 is 62,748. If the figure of 316,000 is correct this would leave 62,748 Maori voters unenrolled. Mr Hunt pointed out, however, that the figure of 316,000 does not take into account three factors - the number of Maori deaths since the 1991 census the migration of Maori from New Zealand (or presumably returning to New Zealand) and the number of Maori who may identify as Maori for the purpose of the census but not for electoral purposes and who are therefore on the General roll (but not recorded as Maori on the General roll). Mr Hunt did not himself give an estimate of the number of unenrolled eligible Maori electors. He stated the total number of unenrolled electors as 167,000. This includes both Maori and non-Maori.

Crown Counsel advised the tribunal that Statistics New Zealand considers that the highest possible number of unenrolled eligible Maori voters would be about 60,000 but is unable to give a precise figure.

In the light of this evidence the tribunal is also unable to form an opinion on the precise number of eligible Maori voters who are not enrolled. It is apparent, however, that the number is very substantial and it would be reasonable to assume it is not less than 50,000 and may be higher.

The balance of the $581,000, referred to above, amounting to $150,000, is being paid by NZ Post to INCO Services in order, Mr Hunt says, to reach those Maori electors for whom the direct mail approach is not effective. In addition the sum of $23,663

(including GST) has been spent by NZ Post on 1,200 copies of an information booklet for use at hui and by Maori leaders for the purposes of explaining the exercise of the option and its consequences in the context of the MMP electoral system.

A copy of the contract between Mr Katene and Professor Love and NZ Post Ltd signed in December 1993 was put in evidence. NZ Post undertake to pay the contractors Katene and Love $150,000 for the performance of services designed to ensure that during the advertising campaign for the Maori option Maori are informed about the option and how they may exercise the option.

The information to be presented by the contractors Katene and Love is to include what the Maori option means; when it may be exercised; the implication of transferring from one roll to another; the process for transferring from one roll to another; and familiarisation with the Notice Concerning the Exercise of the Option. Nothing is said about attempting to enrol those many eligible voters who are not enrolled.

The contract provides that the dissemination of this information is to be achieved by the performance of some or all of the following services

1. Providing advice to NZ Post regarding the design of the envelope to be used to distribute the mail Notice Concerning the Exercise of the Option and the information to accompany the Notice.

2. Providing a telephone "information desk" and to respond to 0800 enquiries referred to them by NZ Post about the Maori option.

3. Providing to NZ Post a list of matters which would be appropriate to incorporate in an information leaflet.

4. Production of a video which may be used in presentations.

5. Distributing information packs produced by NZ Post at NZ Post's expense.

6. Advertising the Maori option by

    - conducting a national hui at the Turangawaewae Marae on 20 January 1994.

    (The tribunal notes that it was the hui held at Turangawaewae on 14 January 1994 which gave rise to the claim before the tribunal.)

    - conducting regional hui;

    - radio broadcasts on Aotearoa Radio and Iwi radio network link;

    - placing advertisements in four Iwi publications.

7. Establishing and staffing information booths at key supermarket malls in Auckland, Hamilton and Wellington to distribute information and advice.

It is appropriate to note at this stage that in addition to the funding by NZ Post financial and other assistance is being provided Professor Love and Mr Katene (through INCO Services) by Te Puni Kokiri.

The major component of this assistance is the secondment of some ten officers in the employ of Te Puni Kokiri from their existing duties to act as kaiwhakarite (or liaison officers) in each regional office for the period up to and including the option. These kaiwhakarite would liaise with local representatives of the three pan-Maori groups involved in the campaign - the National Maori Congress, the New Zealand Maori Council and the Maori Women's Welfare League - and other interested groups. They would also facilitate campaign activities such as arranging speaking venues, organising and staffing information desks in malls and at sporting events and the distribution of written material. It is hoped to have a largely voluntary effort to sustain the campaign. The cost of the secondment of these officers from their normal duties is claimed to cost approximately $100,000 (including GST). While as a matter of book-keeping there may be a notional cost of this amount it does not in fact constitute additional expenditure of $100,000, as provision will already have been made for the payment of the salaries of the officers being seconded from their normal duties.

In addition, Te Puni Kokiri has agreed to contribute $35,000 (including GST) towards the cost of secretarial support services in Wellington ($20,000), radio advertising ($13,000) and postage ($2,000). The Ministry will also fund ten regional training and strategy sessions on the option at a cost of $12,400.

Including the book entry for the secondment of the kaiwhakarite at a notional cost of $100,000, the total contribution is assessed by Te Puni Kokiri at $147,400 (including GST). The tribunal notes however that the actual cost to the Ministry is of the order of $47,400 and possibly rather less if the secretarial support services ($20,000) are also being rendered by seconded staff already on the pay-roll.

4.5 The Adequacy of the Crown Funding

The Crown funding to Maori is as follows:

-	$150,000	to the contractors Ngatata/Love
-	$ 23,663	on 1,200 copies of an Information booklet
-	$ 47,000	in personnel and services by Te Puni Kokiri.
		Note: This sum excludes the $100,000 for
	$220,663	salaries already committed.

Associate counsel for the claimants, Hamish Hancock, in his final submission on the issue of funding, stated that the measures required to inform and educate Maori on the option and to facilitate enrolment and participation fall into two broad categories, neither of which, it is claimed, has been adequately funded:

(1) Maori traditional method of communication and instruction - kanohi ki te kanohi. A number of witnesses testified to the critical importance of this approach.

(2) Conventional method of mass communications as targeted to a specific audience. Various witnesses spoke of the need for this as part of the Maori Electoral Option campaign.

We will consider each in turn.

4.6 Kanohi Ki Te Kanohi

We have recounted in some detail the various campaigns conducted by Professor Love and Mr Katene as a Steering Committee for the three pan-Maori national organisations. Each was, within the constraints of the available funding by the Crown and the limited time available, remarkably successful. That the Government agencies concerned had confidence in the techniques and methods employed in the various campaigns is evident by the repeated willingness of different official bodies to fund the various campaigns.

It is clear that the success of each of these campaigns was the reliance in each case on kanohi ki te kanohi - face to face discussion. We accept as established beyond any reasonable doubt Professor Love's conclusion that, with respect to the Maori Electoral Option, the "proven methodology used in the earlier campaigns to disseminate information to Maori on what are quite complex issues provides ... the most effective model for informing Maori of this crucial issue".

There are various reasons for the much greater effectiveness of kanohi ki te kanohi over conventional mail hand-outs and the distribution through other means of written material without personal contact and discussion. We will refer to a number of the claimants' witnesses besides Professor Love who discussed the question.

Lou Tangaere is Chairman of the Tairawhiti District Maori Council, the Rahui Marae Committee, Waiapu North Maori Committee and the Horouta Maori Executive. He explained that there are numerous problems inherent in contacting Maori in a rural and isolated community, particularly when the message is in print form. Speaking from his experience as a farmer in a remote and isolated part of the country he expressed the opinion that simply sending a letter or written booklet would be inadequate as a means of informing Maori of the Tairawhiti. He explained that many families had neither telephones nor motor transport and often lived at some remove from the nearest post office. Most were serviced by rural delivery mail "which is infrequent and often unreliable". If communications are to be successful in his region Mr Tangaere said that Maori prefer to discuss serious issues face to face and this approach is critical for people who learn by listening and not reading (A12).

Maanu Paul represented the New Zealand Maori Council as an Executive member. He referred to his experience prior to last year's election participating in a kanohi ki te kanohi campaign to educate Maori about the electoral referendum. Mr Paul stated that the face to face approach was crucial to the success of the campaign. In his opinion television, newspaper and radio mass media are quite inferior public relations

methodology to the kanohi ki te kanohi method (A16).

Edward Macpherson Kohu Douglas, a Senior Lecturer in Sociology at the University of Waikato with expertise in demography, spoke particularly about the special problems of contacting and re-enrolling Maori voters in the Auckland urban area. His focus was upon Auckland because of the large number of Maori of voting age living there, including presumably thousands not on either the Maori or General roll. Auckland now has a Maori population of well over 130,000.

Mr Douglas explained that the Maori population is younger than the non-Maori population and that half of those of voting age are 18-30. People in this range in any society, he said, have the lowest level of interest in political affairs, the lowest level of political party affiliation and the lowest level of participation in elections. Coupled with this, he continued, Maori have comparatively low levels of functional literacy and educational attainment and under-achieve in all the social statistics. Their pre-occupation, therefore, is not with the exercise of the franchise.

Mr Douglas stated that amongst Maori the single parent household is surprisingly prevalent, particularly in urban areas. About one third of all Maori households with children are headed by solo parents, usually women. These solo parent households lead to social isolation which is compounded by lack of telephones in their homes. Without telephones and with a low level of functional literacy, contact must be made on a face to face basis or through the mass electronic media.

In concluding his evidence Mr Douglas contended that the Crown must take into account that Maori have a different culture, social organisation and belief system from Pakeha. Just as enrolment procedures for Pakeha electors have been designed for Pakeha values within their cultural context, so enrolment procedures for Maori electors should be designed for Maori with their distinct values and particular social and economic circumstances in mind (A17).

George Matua Evans of Ngata Porou spoke from the perspective of rural New Zealand on the East Coast where there is a large Maori population. He referred to social problems of Maori in the area. There are also problems with television reception due to local conditions. In his opinion television cannot be relied on to get a message across and cultural issues have to be addressed on the papakainga. The literacy skills of many Maori, he said, are not great.

The constant theme throughout much of the foregoing evidence is the need to ensure that contact with Maori is made on a face to face basis on the Maori Electoral Option issue, and some witnesses also saw the need to utilise mass media education techniques as well.

4.7 Conventional Communications

The second of the two broad categories which Mr Hamish Hancock, for the claimants, submitted is required to inform and educate Maori on the option and to facilitate enrolment and participation, was the need to employ some conventional methods of mass communication targeted to a specific audience.

Mr Hancock submitted that, despite the limitations of conventional communication campaigns for communicating with Maori, the evidence already establishes that the Maori Electoral Option campaign must also rely on this method, including mass electronic media.

Ripeka Margaret Evans is Executive Director of Te Mangai Paho, the Maori Broadcasting Agency which is a Crown entity established under the Broadcasting Amendment Act 1993 to distribute funds for the production and broadcast of programmes in the Maori language and culture. She is also Director of Ripeka Evans and Associates, a Management and Communications Consultancy in Auckland. The consultancy specialises in research, public information and communications advice particularly to Maori and indigenous audiences.

Ms Evans considers the Maori option to be the most significant event which will affect the political status of Maori since the signing of the Treaty of Waitangi. She noted serious concerns that the action undertaken to advise and inform Maori of their right to exercise their option to vote on the Maori roll or the General roll will not be effective.

Ms Evans noted that there is substantial evidence to confirm a direct relation between mass and appropriate advising and informing and a behaviourial result. She referred by way of example to the recent nationwide public health information campaign. The Crown achieved widespread success amongst the non-Maori population in lowering the death rate from Sudden Infant Death Syndrome (SIDS) - or cot death. But, by contrast, the same campaign did not impact significantly upon the Maori population when in fact the ratio of deaths from SIDS amongst the Maori population was and continues to be approximately three times higher than for the non-Maori population.

Ms Evans noted that a number of reasons for the failure of the campaign amongst Maori have been confirmed by communication specialists and include:

- the failure of key messages and informants to appeal to Maori as they were not Maori
- the domination of the delivery of messages in print form
- the absence of a combined Maori mass media campaign coupled with a "face to face" (kanohi ki te kanohi) service delivery programme
- the absence of Maori role models, opinion leaders and principals in the formulation, design and delivery of a campaign matched to Maori psycograph demands.

By way of amplification of her evidence Ms Evans said that appropriate TV advertising (for example, advertising on TV 2 with its high proportion of young Maori viewers) conducted in tandem with a face to face information campaign would be mutually reinforcing whereby the one type of campaign would "drive up the demand" for the other and vice versa.

4.8 Measures Necessary to Fund Enrolment and Effective Participation

The tribunal finds that the evidence before it establishes that the measures required to inform and educate Maori on the Maori Electoral Option and to facilitate both enrolment and effective participation fall into two broad categories.

(a) The traditional Maori method of face to face communication and instruction (kanohi ki te kanohi) and

(b) Certain conventional methods of mass communications targeted to a specific audience, in this case Maori electors both potential and actual.

The tribunal records that the Crown has not sought to challenge the evidence which establishes the foregoing propositions.

4.9 Adequacy of Present Funding Considered

It is next necessary to consider whether the Crown funding made available to Maori through NZ Post and Te Puni Kokiri makes adequate provision to implement the two broad categories of activity referred to. Of the sum of $220,663 made available by the Crown (see 4.5), the largest payment is $150,000 to Professor Love and Mr Katene. In examining this we must consider the extent to which the nature of the services to be performed and the conditions attaching to the funding make provision for implementing the two broad categories of measures required to meet the Crown's Treaty obligation to Maori in relation the Maori Electoral Option.

In 4.4 we noted the services which, in terms of the contract between NZ Post and the Love/Katene Steering Committee, the Committee is expected to provide out of the sum of $150,000. These services fall into the following categories:

(a) Written communication - items 1 and 3 and 6 (advertisements in Iwi publications)

(b) Telephone information desk and 0800 enquiries.

(c) Video for use in presentations.

(d) National hui (already held, in which 200-300 people attended) and various regional hui.

(e) Radio broadcasts on certain Maori radio.

(f) Information booths in key supermarket malls in Auckland, Hamilton and Wellington.

It is apparent that the opportunity for the traditional Maori method of face to face communication and instruction is very limited. It is not known how many regional hui are envisaged but, given the funding, they are unlikely to be numerous. These are

unlikely to be attended by more than a comparatively few of the two hundred thousand or more Maori electors in urban centres. Information booths are limited to certain supermarkets in three centres only and will reach a relatively small percentage of Maori. The radio broadcasts will lack the coverage and impact of a mass TV campaign appropriately targeted. No provision is made for such a campaign.

In addition to the NZ Post funding, which totals $173,663, is the provision of certain services by Te Puni Kokiri which the Ministry has costed at $147,400 but which, excluding the salaries for seconded officers already provided for, involves an additional expenditure of $47,400. However, note must nevertheless be taken of the services of the 10 kaiwhakarite who will be deployed for two and a half months to liaise with local representatives of the three national Maori groups and others involved in the campaign. It appears they will be largely dependent on the actual field work of kanohi ki te kanohi being done by voluntary workers. How effective they will be in ensuring widespread contact is not known.

It is instructive to compare the funding of $320,066.38 provided the Love/Katene Steering Committee to undertake a reduced Maori Voter Information campaign based solely on the kanohi ki te kanohi methodology (and excluding the multi-media approach). The Crown funding for the present campaign falls well short of this sum. It is apparent that only a very limited kanohi ki te kanohi campaign falling far short of anything approaching national coverage can be mounted on the present limited funding through NZ Post and Te Puni Kokiri.

The same observation must be made as to the prospect of an effective targeted media - especially television - campaign being undertaken. Brian Charles Scott is a Public Relations Consultant with Network Communicators, one of the country's largest public relations consultancies. In affidavit evidence (A14) Mr Scott advised the tribunal that, in his considered opinion, the information kit "Maori Option 1994, Your Choice" and the $150,000 allocated to the campaign, whilst a useful start, would in no way be adequate for the communications task required. He recommended an indicative programme and costings for a Maori option campaign amounting to $1,308,000 (including GST). A substantial component was $785,000 on advertising including $600,000 through TV 2, and, as a separate item, $150,000 for a one-hour special Television programme.

An affidavit by Susanne Mary Wood, a Wellington Communications Consultant, was also submitted in evidence (A15). After taking into account the funding to be provided by NZ Post and Te Puni Kokiri Ms Wood saw the need to expend at least an additional $381,500 to add value to the work already to be undertaken. Like Mr Scott, Ms Wood placed considerable emphasis on the need for a television campaign. Her proposals however made little provision for a kanohi ki te kanohi campaign.

The tribunal would stress that the outcome of the Maori Electoral Option is of the highest constitutional, political and indeed social importance to Maori. For the first time since 1867 when Maori were given the right to elect four Members of Parliament, a major change has been made which could result in a long overdue enhancement of their

rangatiratanga and a significant increase in their representation and hence influence in Parliament. That the effective political representation of our citizens is of the highest importance is evident from the expenditure by the Crown for the electoral cycle in the three years to 1993/94. The expenditure for this one electoral cycle for the maintenance and updating of the electoral rolls amounted to $47,000,000. Measured against this massive sum the additional amount required to effectively fund the Maori Electoral Option campaign is modest.

4.10 Economic and Social Circumstances

Before stating our findings on the adequacy of the funding and associated services provided by the Crown for the Maori Electoral Option campaign, we should return to a submission by Crown counsel arising out of the judgment of the Privy Council in the *Broadcasting Assets* case. After quoting the passage of the judgment dealing with Treaty principles, Crown counsel submitted that the Crown's obligation under the Treaty to protect Maori citizenship rights and rights to equality is not a unqualified one. He submitted that the obligation rests on the Crown to take such steps as are reasonable having regard to, for example, economic and social circumstances. This submission was no doubt prompted by the passage in the Privy Council judgment to which he referred stating that the protective steps which it is reasonable for the Crown to take "change depending on the situation which exists at any particular time". The judgment went on to say that in times of recession the Crown may be regarded as acting reasonably in not becoming involved in heavy expenditure in order to fulfil its obligations although this would not be acceptable at a time when the economy was buoyant. Although inviting the tribunal to have regard to present economic and social circumstances Crown counsel did not adduce any evidence as to such circumstances.

Before considering this matter further the tribunal notes one further important matter adverted to in the Privy Council judgment. Immediately following the reference to the situation when the economy is buoyant is the following passage

> Again, if as is the case with the Maori language at the present time, a taonga is in a vulnerable state, this should be taken into account by the Crown in deciding the action it should take to fulfil its obligations and may well require the Crown to take especially vigorous action for its protection.

Whether the Maori Electoral Option is in Maori terms a taonga was not argued before us and in the circumstances we make no express finding. But the right of political representation in the form of the four Parliamentary seats reserved to Maori has long been a highly valued right and expression of rangatiratanga, as is the Maori language. The right of political representation has now been enhanced by the Electoral Act 1993 and the evidence before us strongly suggests that the present rights are highly prized. The tribunal considers that, given the high importance of the fundamental constitutional rights at issue in this claim, the Crown, in the words of the Privy Council, should "take especially vigorous action" for their protection. If adequate funding is not provided for both a vigorous kanohi ki te kanohi and a targeted mass media programme to ensure that as many Maori as possible are enrolled and exercise an informed choice then Maori will be seriously prejudiced.

We return now to the current economic and social circumstances which it is said by Crown counsel are relevant in determining what steps should reasonably be taken by the Crown. In the absence of any evidence from the Crown or the claimants the tribunal in the exercise of its powers as a Commission of Inquiry has obtained for the record a copy of the State of the Nation address of the Rt. Hon. the Prime Minister, Mr Bolger. This address was delivered at Auckland on 27 January 1994. From a comprehensive address we cite the following:

- The OECD predicts that in the March '96 year New Zealand will have the second fastest growing economy among its members.

  The OECD also expects us to rank third among its 23 members in job growth in a time of international recession with trade barriers raised high against us, this has been a remarkable performance, one that has attracted world-wide attention.

  New Zealand's performance has been impressive and the recovery must not be squandered.

- We now have, for the first time in 20 years, the opportunity to choose the kind of future we want for our nation and for our children and grandchildren.

- The National Government I lead into its second term has two broad strategic obligations. These are:

  1. To maintain and accelerate the rate of economic growth, and

  2. To enhance social cohesion in New Zealand.

- Treasury announced last Friday that the deficit at this stage of the year is $560 million better than the October update. That is good news.

- ... While acknowledging that many of our social, community and environmental goals are dependent on economic growth that does not mean social and environmental issues can be put to one side until after the achievement of economic gains.

- The second [key] goal we must continue to focus on if we are to build a more cohesive nation is the issue of Maori development and Treaty of Waitangi claims.

In his concluding comments the Prime Minister noted that:

> We New Zealanders have come a long way in the past few years. From being a sick economy to being a successful one.

The tribunal considers these comments largely speak for themselves. They point to an economic recovery, the need to enhance social cohesion and (as one of six key goals)

to a focus on the issue of Maori development and Treaty of Waitangi claims.

We note that Maori development is important in the political sphere as well as economic and social concerns.

This claim concerns a fundamental political right which the Crown is obliged by the Treaty to take all reasonable steps to protect and nurture. The present Government merits credit for the changes to the Electoral Reform Bill incorporated in the Electoral Act 1993 which have greatly enhanced the provisions for Maori political representation in Parliament. It would be a tragedy for Maori and the country if, through lack of adequate funding, these enhanced rights prove ineffective.

The tribunal finds that, if adequate funding is not provided to facilitate a comprehensive kanohi ki te kanohi campaign in conjunction with an extensive and effectively targeted mass media programme, the new political rights will not be effectively implemented and Maori will be prejudicially affected.

In the light of the evidence before it the tribunal finds that the present level of funding and services being provided by the Crown through the agency of NZ Post and Te Puni Kokiri is substantially less than is required to meet the Crown's Treaty obligation to protect Maori citizenship rights and in particular the effective exercise of the Maori Electoral Option.

In coming to this conclusion the tribunal has taken into account the funds and associated services made available in 1993 to the Love/Katene Steering Committee for the various campaigns relating to the interest of Maori in electoral matters.

The tribunal has not been asked by the claimants to specify a particular sum which it considers the Crown should reasonably provide to meet its Treaty obligations. While clearly a sum substantially greater than is at present being provided is called for, it should be considered in the light of the wider obligation on the Crown to provide for the maintenance and updating of the electoral rolls. In the three years to 1993/94 (ie one electoral cycle) a total of $47 million has been spent for this purpose. The provision of a substantially increased sum for the purposes of the Maori Electoral Option would be a relatively small proportion of the total outgoings for electoral purposes.

Given the indifferent treatment of Maori in respect of political representation by successive governments in the past the opportunity now arises to ensure that the greatly improved statutory provisions are given full effect. It cannot be said that Maori are unwilling to play their part. Much voluntary labour and effort will be called for in the face to face campaign. Reasonableness, mutual co-operation and trust are called for to ensure an equitable outcome.

With goodwill on the part of both Treaty partners the tribunal believes that agreement could be reached on a supplementary Maori Electoral Option campaign programme which would incorporate both acceptable kanohi ki te kanohi proposals and a suitably targeted mass media programme - the necessary additional funds to be supplied by the

Crown, and the Maori partner to be appropriately accountable to Government for their proper and timely implementation. The supplementary programme should be designed and funded to ensure the maximum possible participation of Maori, including those yet to be enrolled, in the Maori Electoral Option.

Chapter 5

Findings and Recommendations

5.1 Findings on Treaty Principles

The tribunal finds that the Crown is under a Treaty obligation actively to protect Maori citizenship rights and in particular existing Maori rights to political representation conferred under the Electoral Act 1993. This duty of protection arises from the Treaty generally and in particular from the provisions of article 3.

The tribunal further finds that the partnership relationship the Treaty envisages should be founded on reasonableness, mutual co-operation and trust. The Crown in carrying out its obligations is not required, in protecting Maori citizenship rights to political representation, to go beyond taking such action as is reasonable in the prevailing circumstances.

5.2 Other Findings

The tribunal finds:

- That the precise number of eligible Maori voters who are not enrolled is not known but it is reasonable to assume the number is not less than 50,000 and may be between 50,000 and 60,000.

- That the measures required to inform and educate Maori on the Maori Electoral Option and to facilitate both enrolment and effective participation fall into two broad categories.

  (a) The traditional Maori method of face to face communication and instruction (kanohi ki te kanohi) and

  (b) Certain conventional methods of mass communications targeted to a specific audience, in this case Maori electors both potential and actual.

- That if adequate funding is not provided by the Crown in addition to that already provided to facilitate a comprehensive kanohi ki te kanohi campaign in conjunction with an extensive and effectively targeted mass media programme, the Maori political rights conferred under the Electoral Act 1993 will not be effectively implemented and Maori will be seriously prejudicially affected.

- That the present level of funding and services being provided by the Crown through the agency of New Zealand Post and Te Puni Kokiri is substantially less than is reasonably required to meet the Crown's Treaty obligation to protect Maori citizenship rights and in particular the effective exercise of the Maori Electoral Option, and is in breach of Treaty principles which require the Crown actively to protect Maori rights to political representation conferred under the Electoral Act 1993 and as a consequence the effective exercise of the Electoral

Option by Maori will be seriously prejudicially affected by such a breach.

5.3 Recommendations Pursuant to Section 6(3) of the Treaty of Waitangi Act 1975

1. That the Crown funding to Maori be increased as a matter of urgency to a level sufficient to achieve the maximum possible enrolment of Maori electors and to achieve adequate promotion and information upon the exercise of the Maori option.

2. That the Crown as a matter of urgency consult with representatives of the three pan-Maori organisations - the National Maori Congress, the New Zealand Maori Council and the Maori Women's Welfare League - with a view to settling the programmes necessary to facilitate a comprehensive kanohi ki te kanohi campaign in conjunction with an extensive and effectively targeted mass media programme, such consultations to include the amount of additional funding required to implement such programmes over and above the funds and services already made available through New Zealand Post and Te Puni Kokiri.

3. That consistent with the tino rangatiratanga of Maori protected under the Treaty, responsibility for the implementation of the additional programmes be vested in the Maori representatives of the three pan-Maori organisations subject only to such control as may lawfully be required.

In accordance with s6(5) of the Treaty of Waitangi Act 1975, the Director of the tribunal is requested to serve a sealed copy of this report on:

(a) The claimant Hare Wakakaraka Puke

(b) The claimant's solicitors, Woodward Law Offices

(c) Minister of Maori Affairs
Minister of Justice

(d) Solicitor-General

DATED at Wellington 10th this day of February 1994

G S Orr, Presiding Officer for and on behalf of:

Brian Corban,	Member
M P K Sorrenson	Member
Makarini Temara	Member
Keita Walker	Member
Hepora Young	Member

Appendix 1

Statement of Claim

Statement of claim by Hare Wakakaraka Puke
on behalf of himself and those Iwi and
and other Maori authorities
who attended a Maori Electoral Option hui
at Turangawaewae on 14 January 1994

I, Hare Puke, for myself and those Iwi and other Maori Authorities who attended a hui on the Maori Electoral Option at Turangawaewae on 14 January 1994 (list of attendees attached) and any others who consent to being so joined.

Claim that Maori are prejudicially affected by current Crown policy and practice for the protection of Maori democratic rights and the maintenance of Maori Parliamentary Representation ("MPR").

And that such policy and practices are inconsistent with the principles of the Treaty of Waitangi ("ToW").

Upon the grounds set out in the attached synopsis of argument and such further grounds as may be given at the Hearing.

And ask for recommendations:

1. That funding to Maori be increased immediately to a level sufficient to achieve adequate promotion and information upon the exercise of the Maori option.

2. That the formulation of policy affecting Maori rolls and education on electoral matters affecting Maori be separately funded independent of State agencies through Maori Congress, New Zealand Maori Council and Maori Women's Welfare League subject only to such controls as lawfully may be needed.

And further ask for an urgent Hearing upon the grounds that a recommendation for urgent funding is sought to promote and inform Maori on enrolments under a Maori option to be exercised between 15 February 1994 and 14 April 1994.

Dated at Gordonton this 19th day of January 1994

Hare Wakakaraka Puke

Synopsis of Argument

1. **The Basis for Maori for Maori Political Representation ("MPR") and Relationship to Treaty of Waitangi**
The basis for MPR is the Treaty of Waitangi ("ToW") and the recognition due to tangata whenua as constitutional contributors to the establishment of the modern state.

The ToW was intended to protect Maori interests as a condition precedent to the Crown's assumption of sovereignty. These interests were and are both proprietal and political, the latter being an implicit acknowledgment and recognition of rangatiratanga.

MPR recognises the state's constitutional origins, Maori proprietal interests and the independent polity of Maori.

The fact that the Maori seats may have come about by "historical accident" in no way undermines their proper constitutional base.

Any reduction in the effectiveness of MPR because of inadequate policies for the maintenance of the Maori seats, without alternative or better arrangements for Maori Rangatiratanga, is inconsistent with the principles of the ToW.

2. **The Maintenance of Proper Arrangements**
Provisions that do not uphold the proper basis for MPR include:

- any arrangements that fail to recognise their separate constitutional status;
- that treat the Maori seats and the Maori rolls as an after thought or ancillary;
- that limits policy formulation in respect of the Maori seats or rolls to the same set of policies that apply for the general community.

Failure to separately and independently resource the maintenance of the Maori rolls is a breach of the ToW.

In particular we say:

- There are special needs and requirements in promoting Maori enrolments that are *not* met from general promotional arrangements;
- Policy for promoting Maori enrolments should be formulated by Maori, with the *only* limitation being that needed to observe the law;

- Policy for promoting Maori enrolments should be *independently* and separately funded;

- Policy for promoting Maori enrolments should be *formulated and funded* independent of state agencies and directed through Maori organisations;

Special needs in promoting Maori enrolments include the needs and requirements for more personalised face to face consultations, oral discussions of the collective voice by hui and through individual and whanau interviews. No such provisions are currently provided, or adequately provided for under existing arrangements.

The Maori option to elect for enrolment between the Maori or general roll is provided for in sections 76-79 of the Electoral Act 1993 and has been fixed by the Minister of Justice to commence on 15 February 1994 and close on 14 April 1994, a date fixed *WITHOUT* adequate consultation with Maori and without adequate promotional and educational arrangements.

The current special arrangement for promotion and education on the option is the allocation of $150,000 (less GST) to INCO Services, an informally constituted Committee established by Maori Congress, New Zealand Maori Council, Maori Women's Welfare League and chaired by two persons independent of those Bodies and a representative of each of those Bodies. We say the said funding is inadequate and insufficient to properly inform Maori of their democratic entitlement and responsibilities.

Appendix 2

Record of Inquiry

Record of Proceedings

1 **Claims**

1.1

Wai:	413
Claimant:	Hare Wakakaraka Puke
Date:	19 January 1994
Concerning:	Maori Electoral Option

2 **Papers in Proceedings**

2.1 Tribunal direction to register claim, 20.1.94

Record of Documents

A **First hearing at Maori Land Court, Haupapa Street, Rotorua, 27-28 January 1994**

A1 *Report of the Royal Commission on the Electoral System*, 1986

A2 Appendix (b) "A History of Maori Representation in Parliament" - by Professor K Sorrenson, in *Report of the Royal Commission on the Electoral System 1986*

A3 Submission in support of the Statement of Claim (claimants' counsel)
- (a) Petition of Makere Rangiatea Ralph Love, 18.8.92
- (b) Information Kit on 1994 Maori Option 23.12.93
- (c) Affidavit in support, Paul Reeves
- (d) Electoral Reform Bill, Maori Participation, 17.3.93
- (e) Paper and Presentation by Ngatata Love and Bill Katene to the Electoral Referendum Panel, 13.7.93
- (f) Review and Report to Electoral Referendum Panel, 16.11.93

A4 Further submissions on behalf of claimants on the issue of funding (H Hancock)
- (a) Electoral Reform Project Group proposals re 1993 referendum
- (b) Review of Maori Voter Enrolment Trial Elsdon/Titahi Bay Ward, 4.8.93

A5	Implications for Maori of the Electoral Reform Bill 18.5.93 (a) Implications for Maori of the Electoral Reform Bill - Addendum 26.5.93
A6	Affidavit - Hare Wakakaraka Puke (a) Donna M T T Durie-Hall, *My Reasons For Choosing The Maori Roll*, 14.1.94
A7	Submission - by Professor N Love
A8	Consultation on Electoral Reform Bill
A9	Report of the Electoral Referendum Panel
A10	The Background on the Maori Option
A11	Contract between New Zealand Post Limited and Bill Katene and Ngatata Love
A12	Evidence of L H Tangaere, 27.1.94
A13	Evidence of Brian Easton, January 1994
A14	Affidavit of Brian Charles Small, 26.1.94 (a) Expenditure estimates
A15	Affidavit of Susanne Mary Wood, 26.1.94 (a) Budgets
A16	Evidence of Maanu Paul, 28.1.94
A17	Evidence of Edward Douglas, 28.1.94 (a) Further statement of Edward Douglas 30.1.94
A18	Evidence of Ripeka Margaret Evans, 28.1.94
A19	Compilation of minutes and reports of various bodies, evidence of Professor Winiata
A20	Evidence of Jim Gray, 28.1.94
B	**Second hearing at Maori Land Court, Haupapa Street, Rotorua, 2 February 1994**
B1	Submissions for the Crown

B2	Closing submissions for claimants on the issue of funding (a) Ministry Of Health - Supplementary Questions 1993/94 Estimates
B3	Closing submissions for claimants
B4	*State of the Nation Address,* by Rt Hon J B Bolger, Prime Minister, 27.1.94

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