

# RETURN TO SENDER!

## *The Fiscal Envelope Policy: Divide and Rule for the '90s*

The government is about to put in place a programme that it hopes will get rid of Treaty of Waitangi claims forever.

Doug Graham, as Minister in charge of Treaty Negotiations, says the new programme, called the 'Fiscal Envelope' policy, has as its aim the "full and final settlement" of what he terms Maori "grievances" by the year 2000AD.

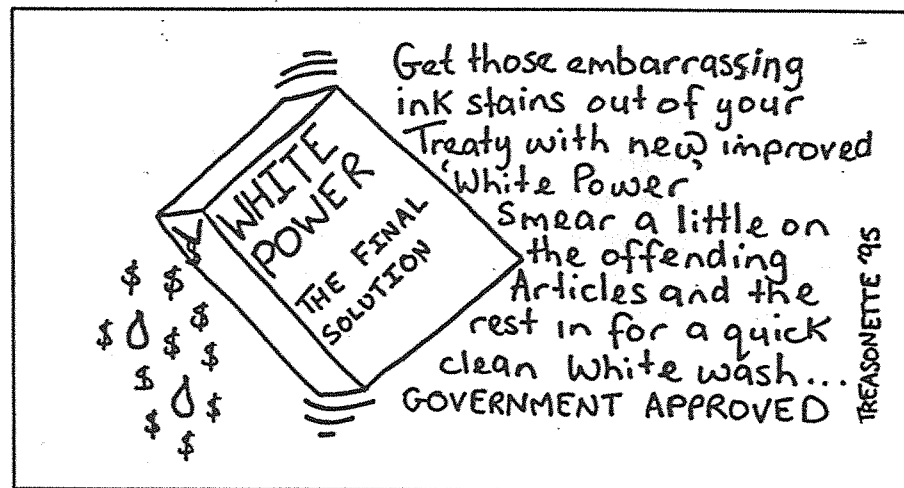
It sounds good. Maori have been waiting 154 years to have their Treaty grievances settled. To have them settled in such a (relatively) short time frame must be a positive thing, right?

Wrong. The Fiscal Envelope is an attempt to "settle" Maori claims and grievances within the limits of what the Crown a) thinks is "fair" and b) says it can afford.

Imagine some people broke into your house and evicted you, then set up a court to decide whether they had acted fairly, with themselves as judge, jury, and executioner! They make all the rules, and declare the result binding forever, with the entire weight of the State (i.e. police, army, bureaucracy etc) to make you abide by their decision. That is a pretty fair approximation of what the Fiscal Envelope policy will try to do.

The idea of "settling" Maori claims and grievances is not what the Fiscal Envelope is all about - getting rid of troublesome Maori claims before the Waitangi Tribunal seems to be the real aim.

In fact, the government's real aims in proposing the Fiscal Envelope



policy were spelled out by John Luxton, Minister of Maori Affairs, at a hui held at Tumatauenga Marae, Moerewa, on September 21 1994. In response to a series of direct questions from Mike Smith (soon to become famous as a tree surgeon), the Minister confirmed five points of concern when he affirmed that the Crown's intention with the Fiscal Envelope policy is to:

1) *Announce the Crown's policy on Waitangi claims as full and final, not negotiable and within a limited 'fiscal cap' (amount of money);*

2) *Announce that therefore Maori will have no rights to natural resources other than what is enjoyed by all New Zealanders;*

3) *Inform Maori that the Crown will continue to provide services to Maori in the same way as to all New Zealanders without regard to specific Maori rights;*

4) *Initiate a process that man- 'tribal leaders' with whom the C can negotiate away Treaty rig-*

5) *Remove all references to M from the law and thereby pr Maori from seeking justice thr the Courts in respect of Treaty and guarantees.*

Simply, the Fiscal Envelope p establishes guidelines for negoti 'full and final' settlements to M claims and grievances. Once Maori claims are settled acco to these guidelines, no Maori c against Treaty rights, aborigina or any other specifically anti-co concept will be entertained b government. The Treaty of Wai will become null and void (h been 'settled'), and all referer the word "Maori" will be v from the statute books.

The name "Fiscal Envel refers to the fact that a set amo

OHMS

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\$1 million  
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Nga Iwi Maori  
AOTEAROA

Redirection Order specifies "New Zealand"  
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NOT T.P.K. NO FURTHER RESPONSIBILITY  
FOR MAORI. TRY USUAL ~~AUXILIARIES~~

Not me! Even I don't want this!

-Tipene

money will be set aside to meet all claims and grievances, and this sum will not be exceeded. It's as if the Crown has thrown an envelope containing money on to the negotiating table and said "That's it. After that's gone, there is no more." Maori claimants are tacitly invited to fight among themselves over the contents of the envelope.

Those contents are limited to the sum of one billion dollars (that is, a US billion, i.e. one thousand million).

That sounds like a lot of money, and it is no doubt intended to sound like a lot of money - both to Maori claimants and to Pakeha observers in marginal electorates (the Crown is ever ready to stir a backlash against Maori claims). But, apart from the fact that the \$170m cost of the Sealord Deal has already been deducted from the billion, the fact is that even with the comparatively small number of claims currently before the Waitangi Tribunal, a billion dollars will go nowhere. For instance, the claim of Te Ika Whenua to the Kaingaroa forest alone has been priced at at least \$5 billion, and that is not the largest claim! When Treasury first mooted the proposal, they estimated a minimum of \$2.2b would be required. It has elsewhere been estimated that somewhere between \$80b and \$100b *might* just cover the monetary value of claims already before the Waitangi Tribunal.

Far from facing its Treaty responsibilities seriously, the Fiscal

Envelope is instead an attempt by the government to buy Maori claimants off without even offering a decent bribe!

### LIMITATIONS

The Fiscal Envelope has other limitations than the amount of money available to settle claims. The very nature of what may be claimed under the process is limited to what the government will allow.

For instance, only Crown land is considered available to settle grievances, not private land. The government claims that the process of settling injustices committed against Maori people should not create further injustices against people who bought illegally acquired (i.e. stolen) land "in good faith".

This in spite of the well established Pakeha legal principle that something that gets stolen belongs to the person it was stolen from, even if the person who stole it then sold it to someone else who bought it "in good faith".

What applies to cars and any other item you can think of, does not apply to Maori land.

Even the availability of Crown land is limited, since the government has decided that national parks and other lands in the "conservation

estate" can not be used to settle claims.

### 'LEGITIMATE' INJUSTICE

As if that wasn't limitation enough, the very way that land came to be acquired will have to be vetted by the Crown before it accepts a claim on it. In other words, the Crown will decide whether land was "legitimately" acquired or stolen. It will only accept claims on land that it *admits* was stolen, not against land that the Crown considers was legally obtained. This ignores the fact that there is a big difference between what the Crown considers acceptable means of getting hold of Maori land, and what Maori people consider appropriate.

### IN A RUSH

A further limitation is that of time. The government wants the whole process over by the year 2000 at latest. That doesn't give many smaller, or less well resourced Maori groups the time they need to research their claims properly. And even those  
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manage  
to do so  
will find  
the costs  
of their  
research  
deducted

*the Fiscal Envelope is ... an attempt to buy off Maori claimants without even offering a decent bribe!*

from the final settlement!

This is consistent with yet another limitation, which puts the burden of proof on the Maori claimants. This means that despite all the evidence to the contrary, the Crown will assume that all of its dealings with Maoridom in the past were fair and reasonable unless the Maori claimant can produce 'strong evidence' (as opposed to the more usual concept of 'reasonable doubt') otherwise.

But perhaps the most curious limitation of the Fiscal Envelope policy is that claims on natural resources will not be considered by the Crown if Maori interests are "based on an acceptance of Maori

ownership”.

Moana Jackson of Nga Kaiwhakamarama i nga Ture (the Maori Legal Service), explains that this limitation is rooted in the Crown’s unilateral definition of ‘tino rangatiratanga’ as a right to manage and use certain natural resources, not a right of ownership over those

### *Claims under the Treaty of Waitangi cannot be settled by throwing money at the odd compliant Maori*

resources. The distinction may seem fine, but it is in fact very important.

“The redefinition of rangatiratanga from a sovereign right of self determination to the right to ‘use’ or manage land underpins many of the difficulties Maori have today with resource questions.” Mr. Jackson writes. “Rangatiratanga was never a right just to use the taonga of Papatuanuku; it was the authority to decide how and by whom they should be used - it was an exercise in ‘ownership’ and political power.”

This is something the Crown will never concede, because if it admits that rangatiratanga involved the exercise of authority stemming from ownership, its whole definition of the Treaty of Waitangi and its own right to govern this country are at once in tatters.

Article II (the Maori version) specifically reserves *tino rangatiratanga* to Maori. The government has chosen to interpret tino rangatiratanga as something less than the full, sovereign authority that the Maori signatories to the Treaty understood it to mean.

### **PLAYING WITH WORDS**

In fact, the Crown has conveniently mixed up the two crucial terms of the Treaty; *kawanatanga*, and *rangatiratanga*.

“Kawanatanga” was granted by the Chiefs (the *rangatira*) to the British Crown in Article I of the

Treaty of Waitangi. It was meant to give the Crown *limited* authority over the large number of white settlers who were coming into the country at the time.

“Tino Rangatiratanga” on the other hand, meant (and still means)

nothing less than *full sovereign authority*. \* In its 1987 definition of ‘principles’

interpreting the Treaty of Waitangi, the Crown neatly reversed the meanings of the two terms, claiming full sovereign authority for itself, and consigning Maoridom’s tino rangatiratanga to the scrapheap of “resource management” - and even that is within limits set by the Crown.

This semantic sleight-of-hand has been continued with the Crown’s insistence in the Fiscal Envelope guidelines that any Maori interest in natural resources must be based on Maori use or knowledge of the resource in 1840, when the Treaty was signed. This means that if Maori had not ‘discovered’ the resource at that time, they have no right to claim it now. This argument was

*\*For a literal translation and explanation of this crucial term, see issue 16 of Treaty Times.*

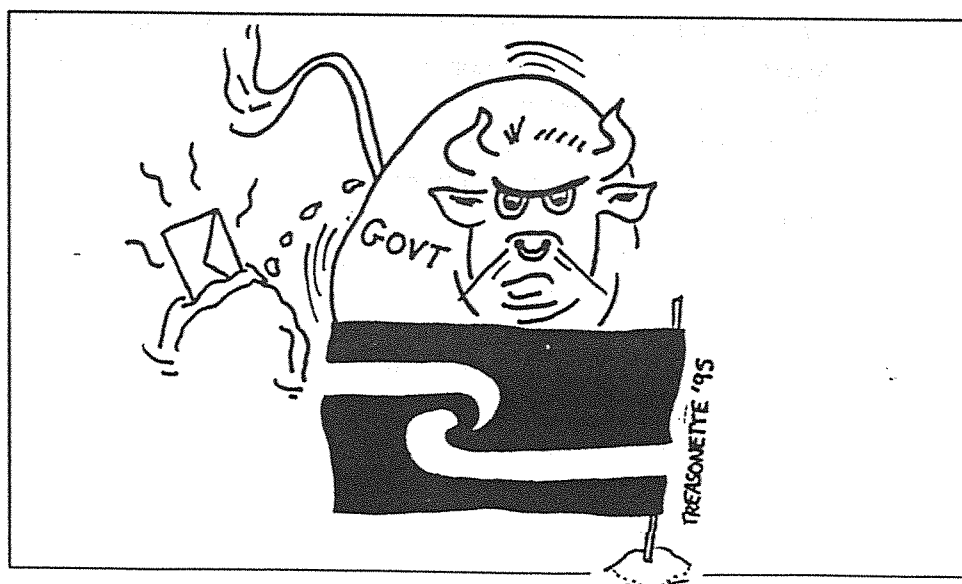
successfully used to throw out the Maori case for ownership of radio wavelengths before the High Court even though Crown ignorance of their existence or use in 1840 has not stopped the Crown from claiming ownership, and even selling of ‘property rights’ to the airwaves!

### **THE GUTS OF THE MATTEI**

But the main objections to the Fiscal Envelope policy are not about the nuts and bolts or the hows and whys of the policy. They go instead to the heart of government policy toward Maori people, and indeed to the very *existence* of such policy.

Claims under the Treaty of Waitangi can not be ‘settled’ by throwing money at the odd compliant Maori. The fact that there are claims at all is an indication that something has gone seriously wrong with the Treaty, because the Treaty was a document that guaranteed Maori their *tino rangatiratanga* - absolute sovereign authority - in other words the right to rule their own nation(s) for ever.

The Treaty of Waitangi can never be ‘settled’; it is an agreement between two sovereign, independent national entities - on the one hand, the iwi o Aotearoa, the Maori people, and on the other, the British Crown. In the document, the two parties made several commitments, including a commitment to each other not to



trample on each other's sovereignty.

The British - or rather the white settler government that the British handed on their powers (and responsibilities) to, has not kept its part of the deal. The Crown has not honoured the Treaty.

If it had, there would be no "claims" because Maori would deal with breaches through their own processes, instead of having to go cap in hand, tugging their forelocks to the Pakeha government. The Pakeha government was never intended to have that sort of power.

If the Treaty is to be honoured, rather than 'settled', all stolen or otherwise unjustly obtained land must be returned, and Maori must have the right to make laws within their own territories - unfettered by Pakeha law.

On this reading of the Treaty, claims can not be considered settled until Maori people are once more in control of their own areas of land, and are running those areas with their own government(s), according to their own laws and customs, and without interference from Pakeha authorities.

That is very far from what the Fiscal Envelope policy aims to do.

To sum up, the Fiscal Envelope policy claims to be an attempt to settle Maori grievances fairly and for ever. In fact, it is an attempt by the Crown to weasel out of its responsibilities under the Treaty. It is a nasty, underhanded attempt to be done with Maori claims and the Treaty forever, without attempting to address the very real injustices that Maori people since Hone Heke have called on it to rectify.

There are strong indications that many in the Maori community see it as just that.

Recently, the pine tree on Maungakiekie (Auckland's One Tree Hill) was chopped down in what could be considered a very restrained protest against the Fiscal Envelope policy (see article elsewhere in this issue). Even Crown stalwarts like Tipene O'Regan, who may be expected to do quite well out of it, have come out

publicly against the Fiscal Envelope policy.

Doug Graham has recently shown signs of stress as he rails publicly against 'irresponsible' protesters putting the Treaty settlement process "at risk" with their opposition to this misconceived policy.

It seems there is a groundswell of Maori opinion building in opposition to the Fiscal Envelope policy which Pakeha people would do well to support to the hilt. After all, if the Crown manage to 'settle' Te Ika Whenua's claim to the Kaingaroa Forest by buying it from them, the first thing the Crown will do is sell the bloody thing off to a foreign multinational. In this way, an asset planted by our parents generation will go to enrich some huge multinational corporation that doesn't even pay taxes in this country.

And that leads us to the real motive behind the Fiscal Envelope policy. It has become plain that the government's agenda - whether Labour or National - is to do the bidding of the big multinational companies that dominate the world's economies. Maori claims under the Treaty of Waitangi are seen as a hindrance to the aims of these multinationals. The Fiscal Envelope policy is designed to clear the decks for the sale of this country to multinational control. Pakeha people stand to lose as much - if not more - from this deal as Maori.

If enough people take a lead from the One Tree Hill protest and get out with their chainsaws (or the appropriate equivalent depending on what colonial monuments are in your local area), perhaps even the Crown will be able to understand the message from the public, scrawled over the face of the Fiscal Envelope in big red letters. That message reads simply:

**"Return to Sender!"**

# TREATY TIMES

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