

**Auntie Sally Karena and
Netta Wharehoka presenting their
case from the floor.
(Photo: Fiona Clark)**

It also recommended a committee of all involved Government Departments be set up to look at regulations and laws to ensure the Maori viewpoint is better understood recognised and protected.

Mr Tuohey's committee will report on ways to achieve both these objectives.

There are some gaps; such as a study of all the North Taranaki outfalls and their effects, but presumably these will follow from the committee's decisions.

That leaves the area of fisheries protection. Mr Tuohey said that issue is not one his committee is dealing with and is something Maori Affairs is looking at.

Mr Couch has so far been eclipsed by the Prime Minister's lime-light role in the whole affair. With that ended, Mr Couch's own attitude to the tribunal's report becomes important.

Before Mr Muldoon's involvement, he said in an interview that he was not prepared to pre-judge the issue. He regarded the tribunal's report as negotiable rather than a set of recommendations he would openly support.

Mr Couch said one of the causes of a history of Maori grievances over fishing rights was that no one depart-

ment could speak for another in ensuring the rights were recognised.

He said that is one thing he will be trying to do something about.

But Mr Couch said he can give no guarantees regarding the issue of fishing rights.

"I think this Government has always been, and it says it in its policy, sympathetic, and stands by the spirit of the treaty," Mr Couch said.

What is apparent is that Mr Couch regards his office as more of a clearing house for the tribunal's recommendations than advocate for their adoption.

But his department is working on related legislation in the form of the new Maori Affairs Bill. The New Zealand Maori Council produced a proposed outline for the Bill which is based on the Treaty of Waitangi and if accepted, will encompass many of the principles argued for in the tribunal's report.

The Maori Affairs Minister's secretary Jim Taitoko said a special committee looking at the proposed Bill is "working frantically" and hopes to have a draft Bill before Parliament this session.

The specific fisheries issues raised in the tribunal's report lie with the Ministry of Agriculture and Fisheries. A golden opportunity to adopt them lies in amending the Fisheries Bill which is being studied by a Parliamentary select committee now.

Likewise the Maori Affairs Bill will identify attitudes towards fisheries reservations and protection. Mr Couch said the Maori Affairs Department is now working on clauses in the Bill in the light of the Tribunal's recommendations.

At this stage the Government has moved to set up specific committees to deal with most of the issues raised in the tribunal's recommendations.

Legislation either before Parliament or soon to be introduced could deal with others.

What follows is a period where a strong group of watchdogs will be waiting to see if bureaucratic study leads to satisfactory action.

In the short term the Government has another opportunity to display good will.

The Treaty of Waitangi Tribunal has no power to recommend costs. But in its report the Tribunal strongly suggests the Crown should make an ex gratia payment to Aila Taylor as representative of Te Atiawa. It also suggests that the local Taranaki Catchment Commission and the Waitara Borough Council should receive a contribution to their legal costs.

That is the sort of practical recognition which could go some way towards restoring the Government's mana.

Alastair Morrison

In a crucial section of the tribunal's report the meaning of the Treaty to New Zealanders is strongly argued. While the Treaty's status in law may be arguable, "no argument has been adduced to question the existence of the Treaty as such or to deny the moral obligation it imposed".

New Zealand Governments and the courts have a poor record compared to other countries in this matter. In North America, for example, the original Indian populations have been recognised and their rights protected whether they have a Treaty or not.

In Canada, native hunting, trapping and fishing rights took priority during the building of a major oil pipeline across the country.

"The overseas experience must cause us to re-think our perception of the Treaty of Waitangi and of its significance," the tribunal states.

The words of the Treaty should be a guide only. Again overseas, the rights of native populations can extend beyond the actual words of a Treaty to include customary rights still exercised.

The lesson in New Zealand is clear. "The spirit of the Treaty transcends the sum total of its component written words and puts narrow or literal interpretations out of place".

Since the Treaty's whole purpose was the protection of Maori rights, the

Maori version and the Maori understanding of what that version means in practical terms, should prevail where there is any quarrel.

Applying this approach, the Tribunal comes to some clear conclusions. These can be summarised as:-

□ The reefs involved in Te Atiawa's grievance and the river are significant and traditional fishing grounds still used.

□ Those at the mouth of the Waitara River are badly polluted and will get worse.

□ A Synthetic fuels plant outfall at Motunui would probably pollute clean reefs.

□ The Treaty obliges the Crown to protect Maori fishing grounds from pollution or destruction wherever practicable.

□ The mana of the Maori people to be able to control their own fishing grounds ought to be upheld.

□ The Te Atiawa people concerned are not getting the protection guaranteed under the Treaty, and their grievances are not even given priority over other considerations in development planning.

□ The Government's laws, regulations, policies and practices in this regard are actually contrary to the principles of the Treaty.

It was this attitude towards the Tre-

ty in relation to Te Atiawa's claim that led logically to the tribunal's recommendations, which are designed to rectify the injustices.

In the wider arena, the Tribunal has, for the first time, set out clearly the way it considers the Treaty should be applied in grievances before it.

The approach must give encouragement to Maoris considering use of the Tribunal in airing grievances under the Treaty, because the principles contained have much wider application than merely to Te Atiawa's case.

But the Tribunal goes even further. It states that the Treaty was not merely designed to ensure existing rights were upheld, but was also intended as a blue print to provide direction for future growth and development in New Zealand.

"The Treaty was an acknowledgement of Maori existence, of their prior occupation of the land and of an intent that the Maori presence would remain and be respected. It made us one country, but acknowledged that we were two people. It established the regime not for uni-culturalism, but for bi-culturalism. We do not consider that we need feel threatened by that, but rather that we should be proud of it, and learn to capitalise on this diversity as a positive way of improving our individual and collective performance."