

Business and the Treaty of Waitangi Unleashing the Economic Potential

Introduction

Thank you to Te Awe Wellington Maori Business Network for the invitation to make a presentation today.

I also acknowledge representatives from the Human Rights Commission and the Federation of Maori Authorities and congratulate the 3 groups on the initiative to work together and to bring us together today.

Business and the Treaty of Waitangi

So what is the relevance of the Treaty to Business?

Many of my business clients would initially say it is irrelevant. What have Article I, Article II or indeed Article III of a document signed in 1840 or some esoteric principles, which have come from some Court, or Tribunal cases got to do with my business needs and business success in 2005?

“I’m not interested in the Treaty, it has no effect on my daily life.”

“What’s in it for me? Whilst I can see some political relevance, as a business tool I can’t see any relevance at all.”

So is that the reality? Is the Treaty irrelevant for the purposes of business?

Well the short answer is no. The Treaty is relevant and provides in my view a huge amount of opportunity for the Business sector and ultimately the nation as a whole.

In my view the resolution of historical Treaty claims is actually “*good business*” and will help unleash the economic potential of whanau, hapu and iwi.

Context

Now let’s look at some context.

July 2005

- Our politicians are in election mode. Discussion in relation to the Treaty is charged with electioneering and political point scoring from gravy trains to a biased process. Views range from steady as she goes to time for a change.



- We have a new Maori political party that is making its way up in the polls – at least for the Maori seats.
- The media is always keen to focus on so-called Maori organisations especially those that appear to be in strife.
- Maori still languish at the negative end of health, welfare, unemployment, crime and housing statistics.
- All of this is occurring at a time when expenditure in the Treaty sector is significant. One estimate puts it at \$90 million per annum and that is excluding settlements themselves.

So what are some of the opportunities available for business and the Treaty?

Did you know that expenditure to date in relation to Treaty settlements is just under \$720 million?

So that's about a billion dollars if we add the last few years annual spend to the overall expenditure. Big numbers - the Treaty sector is big business.

Background

The Treaty settlement arena seems to always be topical, especially around election time. The process has however been ongoing since the Treaty of Waitangi was signed in 1840. So-called settlements in the late 19th and early 20th centuries were on an ad hoc and usually non-durable basis.

Since the passing of the Treaty of Waitangi Act 1975 and the formation of the Waitangi Tribunal, there has been a general acceptance that Maori historical grievances dating back to 1840 need to be sorted out.

Indeed there has been general agreement, across the political spectrum and within informed circles, of the scope and scale of the issues, the legitimacy of the major long standing claims and the need for the settlement of historical Treaty claims.

This led to a groundbreaking approach, especially by the Government of the 1990s, to implement a policy where historical settlements were negotiated between the Crown and Iwi to settle the Tribes' historical Treaty claims.

Existing Process Problems

Regrettably however the existing process has stalled in recent times. Indeed it would be fair to say that there are a number of flaws that have become apparent.

Briefly the flaws with the current process include:

- Considerable delay – it takes years.
- Focus on the past.



- Reliance on professionals.
- Focus on the process as opposed to the people.
- Destructive focus on the worst aspects of the relationship between Maori and the Crown.
- Expensive (approximately \$90 million per annum to administer. This **excludes** actual settlements themselves).
- No reasonable end point in sight. At least another 20-30 years **minimum** at the present rate.

Impact of Delay and Existing Process

Regrettably the costs from an administrative perspective are increasing. The delay has also meant frustration levels amongst the stakeholders are high. The diminishing community tolerance has also meant that more radical elements from all sides of the spectrum gain momentum. Race relations also deteriorate as a consequence.

The nation is still looking behind us rather than to the future.

The negative economic impact for the nation is also significant. There is an unnecessary stalling of the Maori economy, particularly in relation to economic development and ensuring that particular large groupings of Maori have an adequate economic base upon which they can springboard.

One only has to look at some of those who have already settled their historical claims to show what is possible, and the potential where fair and durable settlements are achieved.

The lost opportunities for so many Maori who have yet to reach a settlement is huge, I say in the **billions** of dollars.

Overall the delay and flaws with the existing process are not only incredibly negative for Maori, but most importantly, bad for the nation as a whole, both economically and socially.

Desirable Outcomes

The expeditious resolution of historical Treaty claims is hugely desirable for the Nation. Of course any settlements reached must be fair, affordable, timely and durable. All settlements must be full and final.

“*Getting on with it*” allows a healing of the past and the impetus to focus on the future. The opportunities created by the ability to then harness a presently untapped potential are enormous. This will have an incredibly positive impact on Maori and on New Zealand.



A clear opportunity exists for the Business sector to get involved and assist claimants with looking forward and focussing on the future.

A large part of the annual spend thus far is being wasted. Only a small fraction of it is invested on business advice, experience and focussing on the future.

A significant opportunity exists for iwi, hapu and whanau to set goals, divert wasteful spending and increase the investment on looking towards the future by developing business plans, and utilising the skills of the Business sector.

So what's in it for the Business sector?

- Obvious personal satisfaction of getting the job done.
- Good for the provinces and regions.
- An increased client base.
- Increase networking opportunities.
- Remuneration for your services (getting paid).
- Being at the forefront of development opportunities.
- Access to up-and-coming major players in the economy.
- Adds to your market value.
- Ensures the job is done and done well/in a timely manner.

The short message here is that the business sector should get involved. It is crucial that the business sector get involved with the Treaty sector and settlement matters. Help to guide Maori through the minefield – through the morass.

Lets take some practical examples.

There are many business people here today.

On a daily basis you make decisions, which will affect your business, you make the tough decisions. By necessity many of those decisions are pragmatic but no doubt are also principle based.

As a businessperson therefore would you agree for your organisation to go into full-blown litigation that will:

- Last for an unknown number of years (as many as 10).
- Have an unknown and unlimited cost.



- Involve literally thousands and thousands of hours of meeting and preparation time over that period.
- Involve stressing out the very senior members of your organisation to such an extent that many will likely die before the case is completed.
- The case will be run essentially by lawyers and other experts.
- Where the Court process for actually conducting the case changes on a regular basis.
- Where you will have to run your case with possibly as many as 30 other groups, all with their own legal representation.
- That once you have finished arguing the case that you will also have to wait a couple of years to actually receive the decision.
- There is no guarantee of the outcome.
- Any decision is only recommendatory – not binding on the other side.

Now as a businessperson would you agree to go into that sort of litigation knowing all of that information from the outset? Of course not.

And yet we expect it of our Waitangi Tribunal claimants.

Likewise if as part of your business operations you were considering negotiating a deal, would you do so on the following basis:

- Unequal bargaining position with the other party able to adopt a take it or leave it approach.
- The process, through no fault of your own, will take many years.
- The other party spells out all of the ground rules for the negotiations.
- The process will involve numerous meetings, both in Wellington and elsewhere.
- The key personnel of the group that you are negotiating with will change on a regular basis.
- The party that you are negotiating with will decide if they make a contribution towards your extensive costs and if so to what extent and what it covers.
- There's absolutely no certainty as to the outcome of the deal that you are endeavouring to strike.



- Even if you reach an agreement the deal can still be unravelled later (by politicians or others).

When faced with the above situation most business people would run a mile, they wouldn't even start down that path. Yet welcome to direct negotiations. Yet again we expect that of our Treaty claimants.

So why aren't the Business sector already involved?

Many of us are – but not enough in my view – and not to the required extent. The short point is what I call the hoha factor. In some respects it's easier to get on with your own business, your own life, own immediate whanau and be your own boss than having to constantly do things by committee, liaise with people who may have expertise in other areas but have no experience as far as business is concerned and simply have the time to attend hui after hui after hui after hui, for free.

The more that the Business sector can assist in the first instance will ensure that the existing process improves or alternatively can lead to changing the process altogether.

The Business sector can get involved by:

- Accepting leadership roles.
- Giving sound business advice that will help make good decisions.
- Assisting with the development of strategic plans for the claimant community including the setting of desired outcomes and goals.
- Providing advice on how the Treaty and settlement process can best be used to help achieve claimant aims and objectives.
- Assisting iwi, hapu and whanau in negotiations to obtain the desired outcomes by obtaining the best settlement possible.
- Furthermore, as far as post settlement opportunities are concerned, the business sector can also ensure that any assets that are returned are properly managed, invested and utilised so that the fruits may be enjoyed, by not only this generation but also the generations to come.

We have outstanding business people within the Maori business sector. One only has to look at the highest paid New Zealand Chief Executive Ralph Norris, of Nga Puhi descent to see what's possible. There are also many successful Maori organisations and businesses just getting on with business. But the assistance is not limited to the Maori business sector. The key is to connect business success to an area that needs CPR, the Treaty sector. By getting good business people involved, by ensuring that they step up to the plate, things will change for the better for Maori and for us all.

Just look at the business successes as far as Ngai Tahu are concerned.



Also look at what has happened with Tainui since they've turned things around. Just the other day a multi-million dollar deal was done with the Warehouse. What better expression of tino rangatiratanga in my view than to be able to flex your economic muscle and choose whether or not to enter into certain business ventures/joint ventures.

South Taranaki is starting to gear themselves as a result of their settlements.

As I said before it is good business to get on with it. It is good business to resolve historical Treaty claims. It is good business for Maori to start looking ahead to the future and looking at opportunities rather than constantly being required to look back to grievances. It is good business to ensure that expenditure is not wasted. It is good business to unlock the Maori potential, which is being held back by the current process.

The involvement of experienced business people within the processes to sit alongside those already there are the key to success.

The business sector can also utilise their experience to ensure that matters are dealt with expeditiously and not dragged out over many, many years unnecessarily. Indeed business people may be the catalyst for change in the process that is desperately needed.

I issue the challenge to the Business sector.

In my view there are numerous opportunities for those who are prepared to step up to the plate. The skills that those in business possess are urgently required by respective whanau, hapu and iwi to assist them through these very complex times ... and to get Maori out of the Treaty sector morass.

In conclusion I say again that the relevance of business and the Treaty of Waitangi is very clear.

"It is good business to get on with it" and by doing so unleash the economic potential of whanau, hapu and iwi.

James Johnston
13 July 2005

