

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

E PĀ ANA KI
CONCERNING

the Treaty of Waitangi Act 1975

Ā
AND

the Kaupapa Inquiry
programme

HE PĀNUI WHAKAHAU A TE TIAMANA
MEMORANDUM-DIRECTION OF THE CHAIRPERSON

4 Oketopa 2024

Introduction

1. By memorandum dated 1 April 2015, the then-Chairperson set out the Waitangi Tribunal's Kaupapa inquiry programme, detailing the proposed order in which inquiries into claims raising issues of national significance would be heard.¹
2. By further memorandum dated 27 March 2019, the then-Chairperson informed all claimants and the Crown of amendments and updates to the Waitangi Tribunal's Kaupapa inquiry programme.²
3. This memorandum updates the claimants and the Crown on alternative processes that the Tribunal may follow in commencing and progressing its Kaupapa inquiries. It is not intended to replace the processes set out in the earlier memoranda noted from 2015 and 2019, but rather to highlight some of the processes that have been adopted to enable:
 - (a) pressing contemporary issues to be prioritised for rapid inquiry where early reporting would assist the Crown – Māori relationship;
 - (b) the Tribunal to commence or progress a Kaupapa inquiry in a timely manner.

Background

4. In its *Strategic Direction 2014–2025*, updated in 2020, the Tribunal recognised that, as well as claims currently being heard in district inquiries, there were a number of unheard claims lodged with the Tribunal which raised historical and contemporary grievances concerning issues of national significance ('Kaupapa issues'). Two of the Tribunal's strategic goals then articulated were to commence inquiry into claims relating to high-priority Kaupapa issues, and to substantially advance or complete the hearing of claims relating to other Kaupapa issues by 2025.
5. Since issuing and updating the *Strategic Direction*, the Tribunal has commenced or taken steps to commence the following Kaupapa inquiries, under which claims raising issues of national significance have been grouped for hearing.
6. The inquiries are:
 - (a) the Military Veterans Kaupapa Inquiry (Wai 2500);
 - (b) the National Freshwater and Geothermal Resources Inquiry (Wai 2358);
 - (c) the Health Services and Outcomes Kaupapa Inquiry (Wai 2575);
 - (d) the Mana Wāhine Kaupapa Inquiry (Wai 2700);
 - (e) the Housing Policy and Services Kaupapa Inquiry (Wai 2750);
 - (f) the Justice System Kaupapa Inquiry (Wai 3060);

¹ Memorandum of the Chairperson concerning the Kaupapa Inquiry Programme, 1 April 2015.

² Memorandum of the Chairperson concerning the Kaupapa Inquiry Programme, 27 March 2019.

- (g) Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa Inquiry (Wai 3300);
 - (h) the Education Services and Outcomes Kaupapa Inquiry (Wai 3310);
 - (i) the Natural Resources and Environmental Management Inquiry (Wai 3450);
 - (j) the Social Services and Social Development Inquiry (Wai 3460);
 - (k) the Identity and Culture Kaupapa Inquiry (Wai 3500); and
 - (l) the Economic Development Kaupapa Inquiry (Wai 3550).
7. The Tribunal's experience with Kaupapa inquiries (Māori Military Veterans and Mana Wāhine inquiries being partial exceptions) is that most claimants who have sought to participate have put greater emphasis on the contemporary elements of their claims, with some requesting that they be heard ahead of historical grievances. More specifically, in some cases claimants have proposed that the Tribunal give priority to the early hearing and reporting of claims alleging significant actual or potential prejudice from current Crown policy and practice.
8. As a part of its commitment to progressing high-priority Kaupapa claims, the Tribunal has given due weight to this preference when reviewing the sequencing of Kaupapa inquiries and the targeting of issues within inquiries. The Tribunal has considered the following factors in setting the priority of inquiries for hearing:³
- (a) whether the Tribunal's ability to inquire will be removed;
 - (b) the immediacy of the take or potential remedy;
 - (c) the seriousness of the alleged breach or prejudice;
 - (d) the importance of the take to claimants;
 - (e) the importance of the take to Māoridom; and
 - (f) the importance of the take to the nation.
9. These criteria continue to apply, with the stronger focus on contemporary Kaupapa issues giving additional weight to the immediacy of the issues and potential remedies. This has required the Tribunal to be flexible and responsive in reordering the inquiry programme as and when claimant and Crown priorities change. To some degree, this is why the following inquiries – (which dealt with nationally significant issues affecting Māori as a whole) – were accorded urgency or priority: the Marine and Coastal Area (Takutai Moana) Act 2011 inquiries (Wai 2660 & Wai 3400); the Kura Kaupapa Māori Urgent Inquiry (Wai 1718); the Oranga Tamariki Urgent Inquiry (Wai 2915); the Oranga Tamariki (section 7AA) Urgent Inquiry (Wai 3350); the Māori Wards and Constituencies Urgent Inquiry (Wai 3365); the Climate Change Priority Inquiry (Wai 3325), and; the urgent and priority

³ Memorandum of the Chairperson concerning the Kaupapa Inquiry Programme, 1 April 2015, at [22].

inquiries into claims concerning the disestablishment of Te Aka Whai Ora (Māori Health Authority) (Wai 2575).

10. For those Kaupapa inquiries that have commenced hearings, a greater degree of flexibility has been employed, and innovations such as wānanga, tūāpapa hearings, early evidential hearings, staged reporting,⁴ and the commissioning of pou tikanga/pou reo,⁵ have been adopted in determining and scheduling the issues to be heard and reported on within inquiries.
11. This is in line with the Waitangi Tribunal's ability under clause 5(9) in Schedule 2 of the Treaty of Waitangi Act 1975, whereby the Tribunal 'may regulate its procedure in such manner as it thinks fit'.
12. The objectives of these innovations have varied, but some of the common themes for their adoption have been to accelerate the procedural and interlocutory stages of the inquiries and to implement a hearing plan that better aligns with tikanga principles. In adopting these innovations, the Tribunal has, therefore, kept the order of Kaupapa inquiries under review and adjusted the programme as appropriate.
13. The Tribunal's experience to date is that the process for the startup of a Kaupapa inquiry can be cumbersome and time consuming. This is partly because the procedural steps previously outlined by the Tribunal in the 2015 and 2019 memoranda-directions mentioned above require a reasonably significant amount of lead-in time to implement. In part, the innovations noted above are a direct response to this challenge. The innovations show that it is possible to follow most of the steps outlined in the 2015 and 2019 memoranda-directions in a manner that does not cause undue delay to the hearing of the substantive issues.
14. The Tribunal considers it is useful to now record some of the innovations that have been adopted to date to streamline the Kaupapa inquiry process, including by enabling the Tribunal to hear matters of substance while procedural and interlocutory matters are addressed. These innovations enable the timely inquiry into and reporting on claims before the Tribunal. The Tribunal encourages parties to consider the adoption of these initiatives and to explore other alternatives for hearing matters of substance during the procedural and interlocutory phases of an inquiry.
15. The descriptions of the innovations discussed below reflect how each innovation has been deployed to date. While it is anticipated that each of these innovations could be adopted by other Kaupapa inquiries, the Tribunal recognises that each Kaupapa inquiry will have

⁴ Staged reporting has been used in various inquiries, including the Health Services and Outcomes Kaupapa Inquiry (Wai 2575, #2.5.17), the Housing Policy and Services Kaupapa Inquiry (Wai 2750, #2.5.25), and the Marine and Coastal Area (Takutai Moana) Act 2011 inquiries (Wai 2660, #2.5.16 & Wai 3400, #2.5.6).

⁵ Pou Tikanga and Pou Ture Pākeha were commissioned in Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa Inquiry (Wai 3300, #2.3.1). Pou Tikanga were commissioned in the Justice System Kaupapa Inquiry (Wai 3060, #2.3.1). Pou Reo (or mātanga reo) were engaged in the Kura Kaupapa Māori Urgent Inquiry to assist the Tribunal panel in preparing the inquiry's final report (Wai 1718, #2.5.24, #2.6.1).

unique elements that will influence the degree to which these innovations, or any others, may be implemented.

Innovation One: Wānanga

16. In *Tomokia Ngā Tatau o Matangaireia* – the Constitutional Inquiry, the panel chose to commence hearing the substantive principles that should underpin their inquiry through wānanga. Four pou tikanga (experts in tikanga) and three pou ture pākehā (experts in New Zealand law) were commissioned to produce a report on a tikanga and Treaty-compliant process for hearing the claims of the inquiry.⁶ This report is attached as **Appendix 1**. Following this report, the inquiry commenced a process to ‘wānanga with parties to hear their feedback on the report and discuss any desired changes to the proposed inquiry process through consensus building’.⁷
17. In *Te Tūāpapa o Te Tika*, the second stage of *Te Rau o te Tika* – the Justice Inquiry, wānanga were used as well. Four pou tikanga were commissioned to assist in the inquiry and produce a guideline/report/pukapuka.⁸ The panel and the pou conducted four wānanga to hear from Māori on tikanga Māori relating to justice and procedure, and are now completing their report.⁹
18. Wānanga may be used to:
 - (a) identify the substantive tikanga and other core values, norms, and principles that should underpin an inquiry;
 - (b) enable parties to have a proactive role assisting the Tribunal to decide the scope of the inquiry, what the claims’ issues are, and how the claims issues should be inquired into;
 - (c) largely replace the role of statements of claim and statements of response (pleadings); and
 - (d) enable parties to find common ground and to reach a consensus on possible solutions in relation to each theme of an inquiry and/or decide how each theme will otherwise be inquired into.

Preparatory process

19. Prior to the commencement of the wānanga phase, the Tribunal may issue a preliminary list of claims (prepared by Registry and Inquiry Facilitation staff) that also identifies the relevant themes raised by the claims. Further steps may then include:
 - All parties filing their initial statements of position on the themes and claims issues.

⁶ Wai 3300, #2.3.1, at [7].

⁷ Wai 3300, #2.3.1, at [8].

⁸ Wai 3060, #2.3.1, at [7] & [10].

- Parties filing a statement of the tikanga principles, values and norms they consider underpin the inquiry.
 - The Crown filing the principles that the Crown considers underpin the inquiry.
20. Pre-wānanga events may be held to enable the parties – as far as possible – to find common ground on the tikanga principles (e.g., mana, mana motuhake, rangatiratanga, whanaungatanga, ngā ritenga/kawa, kaitiakitanga, manaakitanga etc.), claim issues and themes.

Wānanga

21. The parties may then come together in wānanga facilitated by the Waitangi Tribunal panel to discuss and clarify each other's tikanga, and the tikanga and other principles that should underpin an inquiry. Discussions could also canvass the themes and issues arising from the claims. (These themes may then be grouped).
22. The overarching purpose of these discussions would be to establish any points of agreement between claimants and the Crown, any remaining issues between the parties, with a view to then seeking agreement on next steps. This may include agreement on what relief should be granted, or it may lead to an agreed process to continue to inquire into unresolved claim issues following the wānanga phase. Counsel may be present.
23. A report capturing the tikanga principles, values and norms, themes, points of agreement and remaining issues raised at each wānanga would be produced by the Tribunal's Report Writing team.
24. Subsequent wānanga may be scheduled to generate and maintain ongoing inquiry momentum, and allow sufficient time to undertake any other necessary preparatory work (such as the development of any background papers and statements of positions, and/or any pre-wānanga hui).

Innovation Two: Tūāpapa hearings

25. Conducting tūāpapa hearings is a further method by which the foundation of an inquiry may be laid. Tūāpapa hearings may require claimant evidence on important tikanga principles, values, and norms, or themes for the inquiry, or on issues identified early during the start-up phase of an inquiry. Tūāpapa hearings may also be used to hear expert evidence. Counsel may participate in these processes.
26. The Mana Wahine Kaupapa Inquiry commenced with a number of tūāpapa hearings. These hearings were designed to explore the tikanga of mana wāhine and the pre-colonial understandings of wāhine in te ao Māori. The hearings were also designed to form a baseline against which Crown breaches of Te Tiriti o Waitangi could be considered for the balance of the inquiry.¹⁰
27. An example of preparation for a tūāpapa hearing in the Mana Wāhine Kaupapa Inquiry is attached as **Appendix 2**.

¹⁰ Wai 2700, #2.5.28.

Innovation Three: Early Evidential hearings

28. Conducting early evidential hearings is another means by which an inquiry may be streamlined, to enable the Tribunal to hear matters of substance while procedural and interlocutory matters are addressed.
29. Such hearings may involve the Tribunal calling for expert evidence in the relevant field from Crown, claimant, or Tribunal witnesses. Calling such witnesses would be an opportunity to, for instance, hear contextual or high-level evidence addressing the structural framework and policy settings of a Crown system germane to the issues at hand. The evidence may be cross-examined and used in the final report of the Tribunal. Alternatively, the evidence could aid in establishing what's necessary for future technical research and establish priorities.
30. Such an approach was adopted in the Oranga Tamariki Urgent Inquiry (Wai 2915), where contextual hearings were held to enable the panel to 'orient and inform itself of the institutional framework' of Oranga Tamariki and its predecessors, within which had arisen the significant and consistent disparity between the number of tamariki Māori and non-Māori children being taken into state care.¹¹

The Registrar is to send this memorandum-direction to the Crown and all claimants with registered claims and to place an electronic copy on the Tribunal's website for public information.

WHAKAPŪMAUTIA ki Wellington i te 4 o Oketopa 2024



Kaiwhakawā Matua Dr C L Fox
Tiamana

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

¹¹ Wai 2915, #2.5.25.

Tomokia ngā tatau o Matangireia

*Tākina te kawa, ko te kawa kia ihi
Tākina te kawa ko te kawa kia wana
Tākina te kawa, ko te kawa kia tika
Tākina te kawa, ko te kawa kia pono
Tākina te kawa, ko te kawa kia mau
Tākina te kawa, ko te kawa kia ū*

Tākina te kawa, ko te kawa rā ia i takea mai i a Ranginui e tū iho nei, ka uhia iho ki runga i a Papatūānuku e takoto ake nei! He kawa ka horahia ki runga i tēnei wānanga hanga tūāpapa whakairinga whakaaro, tikanga here tangata, kaupapa hautū ara e koke whakamua ai te ao Māori.

Tātou i heke mai i ngā kāwai rangatira i kauhoratia ai tēnei motu taurikura mai tawhiti roa, i tawhiti pāmamao, i poua ai tōna kōrero, takoto te pai, takoto te pai.
Kāti rā kia koutou ka toko ake ki te whakapūmau i te Mana Motuhake kua takoto hei takapau horanui mo Te Whakaputanga ā te Whakaminenga o ngā Rangatira o Aotearoa, i tāmāua ai ki ngā mātāpono o Te Tiriti o Waitangi hei paihere i a tāua i te Manawhenua me te Karauna o Ingarangi, rūmene mai rā tātou he mahi māu me timata.

He mea kia hua ai ko tōna mauri ake! Ko te mauri o runga, Ko te mauri o raro,
He mauri Atua! He mauri Whenua! He mauri Tangata!
He mauri ka tohia ki tenei kōwhiringa e āhei ai te iti me te rahi, ngā maunga kōrero, ngā awa whakahī, ngā moana whakaterere waka, ngā puna waiora o te motu, kia kotahi mai koutou, tomokia ngā tatau o Matangireia!

Tēnā kia hangā e tātou he Whare mā runga i ngā papa pounamu ā ō tātou tūpuna.
Ko tōna Tāhuhu ko Te Tiriti o Waitangi.
Ko te Pou Kaiāwha, ko te Whakaputanga ā ngā Rangatira o Niu Tīrani.
Ko te Pou Tokomanawa hei ngā Tikanga o taku Ao Māori.
Ko te Pou Tūārongo hei ngā Ture o te Motu.
Ko te Tekoteko o te whare nei kō Io Matua Kore.
Ko tōna Kōruru ko Ranginui e tū iho nei.
Ko te Mahau ko Papatūānuku e takoto ake nei.
Ngā Maihi, ko Te Whakaminenga Māori me te Whare Pāremata o Aotearoa.
Ko ngā amo, ko au ko te Tangatawhenua, ko koe ko te Tangata Tiriti.
Ko te Pare me whakairo ki te Mana Motuhake o ōku tūpuna me te Mana Kāwana.
Ko ōna kōrero, “tomo mai koutou nō tua i te taumata moana kia hangaia e tāua he āhuru mōwai mō te hunga ka whai muri mai”.

I roto, e whā ngā pou whakairo kei ia kokonga, hei hiki i te tuanui o te whare. I mua ko te Pou Taraiti me te Pou Taranui kei ia taha. I muri ko te Pou o te Tika me te Pou o te Whakapono. Koia ēnei ko ngā pou i hangaia ai te tūāpapa i noho ā iwi tahi ai tātou i tēnei motu.

Heoi anō rā, kei ahau kei te Tangatawhenua te taumata kōrero o te “Taraiti”, kei a koe kei te Tangata Tiriti te “Taranui”. Ko ngā kōwhaiwhai kei ngā heke o te whare, ko ngā mātāpono o Te Tiriti o Waitangi, tumu here i te iwi o Aotearoa kei tētahi taha, ko te Kawenata Nui o Ingarangi, te kaupapa here ā ture i te Karauna me tōna iwi ki tētahi.

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Waitangi Tribunal

15 Dec 23

Ministry of Justice
WELLINGTON

He Kōrero Whakataki

E te Kaiwhakawā Matua, e ngā mema o te Tira Kōwhiri o Te Roopu Whakamana i te Tiriti o Waitangi nā koutou te wero, heoi anō rā, e whai ake nei ko te hua o te mānuka i hikina ake e mātou te hunga i tohia e koutou hei hanga tūāpapa mo te whare e nohoia ai e tēnei kōwhiringa. Heoi anō rā, nō mātou te maringa nui ki te tuku kupu whakataki hei hora i te mea kua oti i a mātou ki mua i ō koutou aroaro hei tokonga atu pea i tēnei kaupapa whakahira.

The challenge has been worthy as it was invigorating. It left us in awe of the potential for change that is momentous and inspiring. It directed us back to a future envisioned, that might allow us to reset the chimes of time and ring in another opportunity to deliver on the promise of nationhood signed in 1840 by two sovereign nations, which to date, remains unfulfilled.

The Tribunal established Pou Tikanga and Pou Ture with the task of proposing a tikanga-centred framework within which the Tribunal might conduct the Constitutional Kaupapa Inquiry, Wai 3300, and a process through which the possibilities for constitutional change and related claims might be considered, and through which other kaupapa inquiries might be conducted in the future. The framework we propose is built upon the construct of the whareniui. In this instant the house or whare, we endeavour to fashion can be viewed as “Matangireia” here upon this whenua, these lands. It is our ambition that the inquiry should inspire all involved in the inquiry to the highest reaches of endeavour, even unto the highest upper echelon or taumata of the heavens as our tūpuna perceived it.

“Tomokia ngā tatau o Matangireia” is the name brought forward for the inquiry as well as the process we seek to present. As a process it is an invitation to step over the threshold of the house we are building and by that action invoke customs and protocols shaped over countless generations that might guide the Tribunal in its engagement with claimants and other contributors to this inquiry. This naming also represents reclamation of an ancient name, Matangireia, which more recently has been ascribed to a parliamentary select committee room. Whilst the select committee room will continue as Matangireia, it is fitting that this name, Matangireia, finds further application and relevance to this inquiry.

This inquiry will find the Tribunal in the familiar territory of presenting itself in the peoples’ domain. Marae and whareniui are the most likely venues. The Tribunal has a long history of hearing claims on marae, and in whareniui, and of wānanga. We envisage that the inquiry will take the form of a wānanga from the outset. With that in mind we are confident that in the transition towards a more tikanga-centred approach to the way in which the inquiry is heard, nothing is lost in respect of legislative requirements. In presenting this framework and process, through this inquiry, the Tribunal and claimants can create the archetype upon which constitutional change can grow and prosper.

Nō reira e ngā rangatira, i runga i ngā whakaaro o mātou i totoro ki te tārai i te āhua o te whare e manakotia nei e tātou katoa, he whare hei tohe i te rokohanga nui rawa a te ao Māori mai rāno i te orokōhanganga o ngā kawenata tapu i waitohua e o tātou tūpuna ēnei 183 tau ki muri. Toko atu rā koutou, tomokia ngā tatau o Matangireia.

Whakairinga Whakaaro – Constitutional Kaupapa Inquiry (Wai 3300)

This report builds upon the acknowledgements and statements provided above by outlining a tikanga-centred process to be instigated for the purposes of this Inquiry, Wai 3300. This process is to be known as “Tomokia ngā tatau o Matangireia”. The report builds upon the foundations or “kaupapa” of the whare, and in keeping with tikanga-centred processes, allows sufficient room for tangata whenua to determine the overall shape of that process. Tomokia ngā tatau o Matangireia responds to insights gleaned over time that suggests the need for recalibration to occur between “ture-centred” processes and “tikanga-centred” processes. The shift to a Constitutional Kaupapa Inquiry which by nature is thematic, inquires upon issues that affect tangata whenua and that are not necessarily specific to any one district. However, it is expected that wānanga into those inquiries will be led by the home people of each marae venue within their respective takiwā or rohe.

Kaupapa - Inquiry Themes

This then leads us to the central themes of inquiry. From the outset, the panel, which comprises Pou Tikanga and Pou Ture, have been guided by confirmation of the following inquiry themes, which encompass:

- a) Tino Rangatiratanga, Mana Motuhake, Autonomy, and Self-governance
- b) Kāwanatanga
- c) Constitutional Legitimacy and Sovereignty
- d) Parliamentary Sovereignty and Systems
- e) Tikanga Tuku Iho me ngā Ture Pākehā
- f) Electoral Rights and Systems
- g) Local Government and Te Tiriti o Waitangi
- h) National Models of Māori Self-Government; and
- i) NZ Bill of Rights Act 1990 (NZBORA), United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi.

It is important to note here that the Tribunal as a function of its legal powers and as noted by Pou Ture, can commission Pou Tikanga to prepare evidence. This provision is consistent with tikanga, whereby important detail, narratives, accounts, and information are transmitted orally and predominantly by way of wānanga settings.

Tikanga and Ture

In this regard we revisit the respective concepts of “ture” and “tikanga” as both terms are central to this report and to the key recommendation of instigating a wānanga process for hearings. In distinguishing between ture and tikanga, ture is a transliteration. A transliteration occurs where a word or term used predominantly in the English language is converted into a Te Reo Māori form based on sound and intonation, so that the converted word sounds like the English word and carries a similar meaning. The word “ture” is a transliteration of the Hebrew term “torah”. The concept of torah was understood to have had connotations with The Old Testament. As Christianity was introduced throughout Te Moana-nui-a-Kiwa in the early to mid-1800s, torah was seen to be indicative of Western rules and laws that are prescribed or imposed upon wider constituencies of people by a perceived higher level of authority or authoritative power.¹ This

¹ In this context, we are conscious of the recent publication of the Study Paper of Te Aka Matua o te Ture / the New Zealand Law Commission entitled *He Poutama* (NZLC SP24).

is in contrast to indigenous concepts such as tapu and noa, mana, mauri, ihi, wehi and wana, whereby there is an immutable connection between the forces and energies of tangata (people) and the respective forces and energies of whenua (land), wai (bodies of water), rangi (sky), te kāhui tupua (the supernatural realm), te kāhui atua (the divine realm) and te kāhui ariki (the sovereign realm). By further contrast to ture, tikanga can be understood to be akin to sets of actions, practices or behaviours that are determined, shaped, and influenced by kaupapa tuku iho (guiding principles or values passed on from one generation to the next). Kaupapa tuku iho help to ensure that whānau, hapū, iwi and hapori can live and interact positively and harmoniously with one another, across the wider environment, and with a high level of conscious awareness of guiding principles of high importance and criticality to local collective identity or mana. Tikanga are therefore understood to emerge or arise from kaupapa as authentic and demonstrative expressions of kaupapa tuku iho. To offer one example, if the predominant kaupapa tuku iho is one of manaakitanga, one would expect to see expressions of manaakitanga manifest in certain situations. The marae in this regard offers an important example, whereby the process of manaaki manuhiri, particularly upon conclusion of the pōhiri, is demonstrated through endorsed sets of actions, practices and behaviours that are consistent with the principle of manaakitanga.

Of some contention is the extent to which modern post-colonial interpretations of tikanga may have been influenced through subsequent biblical and or judicial connotations such as “right or wrong”, “good or evil”, “truthful or sinful”. Often, the word “tika” is used and applied in such contexts. Irrespective of the extent to which more modern interpretations of tikanga may have evolved or are perceived, it is still possible to grasp hold of the central inference of tikanga, which in essence, are sets of kaupapa-informed actions, practices and behaviours that are endorsed and promoted by whānau, hapū, iwi and hapori. It is the people who determine the application of tikanga, and it is the people who decide whether tikanga remain relevant and applicable or not in any given set of circumstances. To this end, tikanga, unlike kawa (certain rituals and protocols) have a level of fluidity and flexibility. Kawa, by contrast, are enacted within the realm and domain of specific atua, known as an “Iho Atua”. During encounters between manuhiri and tangata whenua upon the marae ātea, the Iho Atua is derived through the mana of Tūmataunga. Kawa generally, are highly ritualised protocols with little room for adjustment or inaccuracy.

In terms of tikanga, perhaps the most recent and widespread example of tikanga being readily adapted was during the peak period of COVID 19 here in Aotearoa, where marae chose not to maintain the tikanga of hongī and harirū. Whilst that adaptation took some time to get used to, marae quickly became accustomed to the new tikanga which sought to best protect the wellbeing of all participants. As the overall risk and prevalence of COVID 19 has subsided, marae have deemed it appropriate to reinstate the tikanga of hongī and harirū. Indeed, the marae remains the most important cultural bastion of tikanga within Te Ao Māori, whereby all people are expected to interact and engage in ways that are *consistent* with tikanga. Within the context of the Constitutional Kaupapa Inquiry, the marae is also seen as the most appropriate venue for this process to be enacted.

It is also useful in this regard to consider other uses of the base word “tika”, such as “whakatika”, which implies to rise, to establish or to erect. There are well known narrative references to the term whakatika throughout many hapū and iwi accounts of the separation story of the primordial parents, Ranginui and Papatūānuku. “Ka whakatika mai a Tāne ki te whakawehewehe i ōna mātua, ka taea e ia” (Tāne arose to separate his parents and thus was successful). Whakatika, in this context, illustrates the active nature of tikanga and the way in

which tikanga emerge figuratively, and literally from the ground up, from kaupapa. Reference to tikanga in this way also encompasses the process and pattern of whaikōrero - of speakers rising, then others rising to add and respond to kaupapa. And this is consistent with wānanga, whereby participants take turns to whakatakoto or lay down their insights, thoughts, and suggestions.

Therefore, the shift for this Constitutional Kaupapa Inquiry from a principally ture-based process to more of a tikanga-based process is highly significant. The shift would emphasise tikanga-informed processes which in turn are an extension of kaupapa tuku iho. Our intention is towards lesser reliance upon litigiously adversarial and legalistic styles of hearing relevant inquiries, and deliberately prioritising a “wānanga” style. It is helpful to consider the distinction between the two systems. The “Westminster” judicial process as adapted in Aotearoa-New Zealand tends to be by nature, adversarial. The wānanga process works in an opposite fashion and is primarily constructivist by nature as opposed to reductionist. Of further importance is the transformative dimension of wānanga. Wānanga are not simply processes by which to reach consensus or agreement about a particular facet of emergent knowledge or mātauranga. Rather, wānanga embody tikanga-centred processes that imbue within all participants a commitment to a *transformative process*, thus taking participants through the associated phases of *Te Kore ki Te Pō ki Te Whaiao ki Te Ao Mārama*. Frameworks that deliberately draw upon tikanga, kaupapa, and wānanga in essence acknowledge potentiality and the processes needed to arrive at a point where māramatanga, or enlightenment, is sufficient for a transformative outcome to have emerged.

Wānanga tend often to be conducted under initial consensus and agreement that upon conclusion, a particular issue, challenge, or opportunity will have been sufficiently explored in order to arrive at an outcome or action (or set of outcomes or actions) that is unanimously endorsed. The judicial system, on the other hand, seeks to emphasise legal processes where contention, doubt, or a lack of sufficient evidence in legal terms can influence final outcomes. Legalistic and adversarial approaches, over time and on occasion, have tended to diminish the weighting and importance of whānau, hapū, and iwi oral traditions and narratives. In terms of marae settings, it is once again important to highlight that a wānanga is not a constituent part of the pōhiri process itself, however, kaikaranga and kaikōrero within the pōhiri may allude to the kaupapa or take of the wānanga. The pōhiri structure, again, is dictated by kawa, or ritual and protocols, pertaining to the local iwi, hapū and marae, and many kawa account for a degree of adversarial interaction. The rituals of pōhiri therefore are generally governed on the marae ātea within the authority of Atua, for example, Tūmataunga and to some extent Tāne.

There are of course some iwi, for example Te Ātiawa and Taranaki, where interaction is governed instead by the authority or mana of the Atua Rongo, in ways that are consistent with the values and principles of “rongomau” and “maungārongo”. In any case, the pōhiri is an important and necessary part of any marae encounter and provides the opportunity for the home people to layout to manuhiri their expectations for the wānanga that is to follow. Our Pou Tikanga support the inclusion of a tikanga-informed process for the Inquiry, whereby the marae is the centerpoint for the wānanga and that the wānanga process is the most appropriate way for associated kōrero to be presented. It allows tangata whenua the opportunity to set the shape for initial exchanges, and in doing so, ensures that the home people can whakatakoto, or lay down, the tone and context for the wānanga that is to follow the pōhiri.

Wānanga

Here we are seeking a transformational change for how the Tribunal not only comes onto a marae, but how the whole inquiry is heard. The inquiry is a wānanga from the outset.

In terms of entering the whare, once inside, all participants will have already interacted and connected within the kawa of the pōhiri, including tikanga such as hohou te rongo, harirū, hongī and with tikanga associated with manaakitanga such as partaking in kai and so on. This then enables wānanga participants to enter the whareniui to participate in wānanga under the guidance and tikanga of the home people, and in a state of mauri tau. This of course will look somewhat different for each host marae as each has their own sets of unique and distinctive tikanga that reflect their own kaupapa tuku iho. In accordance with tikanga, the home people will set the kaupapa of the wānanga from the outset by inviting selected speakers from the marae to open the kōrero. It is up to the marae to determine the speakers, extending to all who may be nominated by the marae to kōrero.

Within the opening kōrero, it is expected that the terms of engagement for the wānanga will become more apparent. Within many whareniui, the kopaiti, or taraiti of the whare, is the part occupied by the home people, and kopanui, or taranui, is customarily the larger part of the whare left over to be occupied by manuhiri. For this process, Pou Tikanga have also discussed leaving “te roro o te whare” or the back end in the centre of the whare, to certain representatives of Pou Ture, in acknowledgement of their mana. The presiding officer and other Tribunal panel members, for example, may be located there alongside their key support people, including administrative and research staff, whilst lawyers, would be located in the kopanui or taranui side of the whare. Once the initial kōrero for the wānanga have been outlined and detailed by the opening speakers, it would be expected that all subsequent speakers would follow by contributing in constructive ways to the desired outcome of the wānanga. It is here that one would expect to see quite marked differences in the way that an outcome or consensus is reached. The wānanga setting prioritises what is known more commonly as “Te Whare Kōrero” or “Te Whare Wānanga”, in other words the house in which constructive, exploratory, and inquisitive kōrero takes place to fulfil the purpose or overarching goal of the wānanga. To this extent there is a high reliance on those guiding or overseeing the wānanga to ensure a positive and definitive outcome is reached. In wānanga settings this is generally the role of the person or people who open, facilitate, and close the wānanga (as discussed earlier).

The timeframe of the wānanga is best determined by the way in which each kōrero is presented and extended upon by subsequent speakers. This may take the course of a day and night, or something either side of that timeframe, but regardless, it is generally expected that participants will agree in principle to allow sufficient time for the wānanga to run its due course.

Embracing the wānanga concept for the whole inquiry, we are seeking transformative change in respect of all processes so that the Tribunal can intrinsically respect the mana of whānau, hapū and iwi. This includes questions as to how evidence is heard, who hears it, who records it, what happens to it. It also raises issues as to the nature of the Tribunal’s responsibility to listen, to see and to hear, for how the Tribunal conveys what it has heard and seen, and how the Tribunal’s report will be published.

He Kōrero Whakakapi

In wānanga settings, and for this Constitutional Kaupapa Inquiry, once the desired outcome or goal of the wānanga has been reached or attained, participants will signal this in a range of ways that may also include karakia and waiata. Such gestures are ways of supporting the outcome and leading further endorsement through mediums such as karakia, waiata and so on, and these are important signs of tohu that the process has reached the stages of Te Whaiao ki Te Ao Mārama. It is then over to those overseeing the ture components of the inquiry to determine how those outcomes might be usefully considered.

Tomokia ngā tatau o Matangireia brings forward an important opportunity to give greater cognisance to tikanga so that the mana of kōrero tuku iho and kaupapa tuku iho can take greater precedence within the Tribunal's inquiries.

Tomo mai koutou nō tua i te taumata moana kia hangaia e tāua he āhuru mōwai mō te hunga ka whai muri mai.

APPENDIX B

WAI 2700 MANA WĀHINE KAUPAPA INQUIRY

TŪĀPAPA HEARINGS PLAN

INTRODUCTION

1. On 19 June 2020, a number of claimant counsel filed a paper¹ setting out the proposed approach for these hearings (the **Tūāpapa Hearings Paper**) which was later supported by the Tribunal.² This plan adopts and updates that paper and provides further detail.

WHAT

Overview

2. These hearings will set the tūāpapa (foundation) for the Inquiry. They will cover the tikanga as it relates to wāhine Māori and the Māori understanding of wāhine in te ao Māori.
3. The hearings will frame the Inquiry from a Māori perspective to ensure the essential nature of wāhine Māori is at the centre of the Inquiry.
4. Over the course of the Inquiry, the hearings will assist in demonstrating the unrelenting, systemic and interrelated acts and omissions of the Crown since the Crown denied wāhine Māori signing te Tiriti o Waitangi, which have caused the negation of wāhine Māori mana motuhake and rangatiratanga over their whenua, taonga, mātauranga, hearts, bodies, minds, beliefs, and physical and metaphysical relationships resulting in the effects of today's inequities.
5. The evidence from these hearings will form the baseline from a Māori perspective against which Crown breaches of Te Tiriti o Waitangi can be considered for the balance of the Inquiry.³

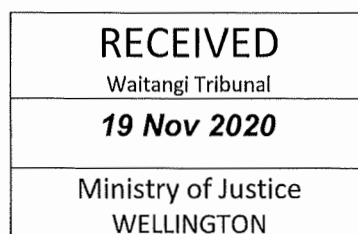
Te Arataki – guide to evidence

6. Te Arataki is a guide for witnesses to prepare for and present evidence at the hearings.

¹ Wai 2700, #3.1.227(b). See Wai 2700, #3.1.227(a) for the claimant counsel in support of Wai 2700, #3.1.227(b).

² Wai 2500, #2.5 at [26].

³ See Wai 2500, #2.5 at [27].



7. The approach to evidence at the hearings will combine the presentation of formal briefs of evidence (to frame themes identified below) with less formal kōrero where possible (particularly to allow for the rangatira/kuia voice, specialist kōrero and storytelling).
8. Therefore, because of the nature of these hearings and to enable witnesses to frame their evidence as they see fit, Te Arataki is a guide intended to serve as a prompt for the preparation of witnesses and evidence and not a strict statement of issues.
9. The four broad themes that these hearings will cover are:
 - (a) atua whāea and tipuna whāea and the blueprint for mana wāhine;
 - (b) te ira wāhine and te ira tangata – the relationality and balance of wāhine and tāne for the good of all;
 - (c) te mana o te wāhine in Te Ao Māori, Māori society and rangatira wāhine; and
 - (d) wāhine rangatiratanga over whenua, whakapapa / whānau, whai rawa and mātauranga.
10. It is likely that all themes will be touched on at each of the three/four hearings with a specific focus on each rohe and their stories where each hearing is held (North, Central North Island, Lower North Island, South Island). It is acknowledged that there is significant overlap in these themes.
11. The following are a series of questions that provide additional guidance on the themes. These are not intended to be binding but are posed as prompts.

Atua whāea and tipuna whāea and the blueprint for mana wāhine

12. Questions to address:
 - (a) Who are our atua whāea?
 - (b) What are the characteristics and stories of our atua whāea?
 - (c) What lessons can we learn from traditional narratives?
 - (d) Have these stories been reconstructed over time? If so, how?

- (e) How do either the traditional or reconstructed stories provide a blueprint for the mana and status of wāhine Māori in pre-1840 Māori Society and contemporary society?

Te ira wāhine and te ira tangata – the relationality and balance of wāhine and tāne for the good of all

13. Questions to address:

- (a) What are the key tikanga concepts (e.g. tapu, mana, noa, manaaki etc) and how are they relevant to wāhine / tāne?
- (b) What was the relationship between wāhine and tāne in traditional Māori society?
- (c) What were the different roles played?
- (d) How did mātauranga and tikanga promote balance between wāhine and tāne?

Te mana o te wāhine in Māori society and rangatira wāhine

14. Questions to address:

- (a) What does “mana wahine” mean?
- (b) What are examples of the expression of mana wahine in traditional Māori society?
- (c) Who were wāhine Māori rangatira?
- (d) What are their stories?
- (e) Who were the rangatira wāhine who signed Te Tiriti o Waitangi in this rohe? Why did they sign?
- (f) Who were the rangatira wāhine who were prevented from signing? Why were they prevented from signing?
- (g) What is the significance of te whare tangata for the mana of wāhine?

Wāhine rangatiratanga over whenua, whakapapa / whānau, whai rawa and mātauranga

15. Questions to address:

- (a) What is the relationship of wāhine to the whenua?
- (b) What was the status and role of wāhine within their whānau, hapū and communities and with respect to the maintenance and protection of the mana of their communities, whānau and hapū?
- (c) What is the significance of te whare tangata?
- (d) What rights and responsibilities did wāhine Māori exercise over land and all natural resources inherent in the land including, forests, waterways and indigenous flora and fauna.
- (e) How was knowledge transferred and what role did wāhine Māori play as the keepers of tapu knowledge?
- (f) How were resources held and managed in Māori society?
- (g) How did this knowledge and the access to resources enhance the mana of wāhine?
- (h) What was the tapu and mana of wāhine Maori and how was this given effect to, protected, and restored?
- (i) What was the tikanga in relation to the whānau, including traditions around birthing, menstruation, and other aspects of wāhine health?
- (j) How were tamariki Māori cared for within the whānau and hapū structure, and in particular, how were decisions around whāngai made?
- (k) What was the role and status of wāhine Māori in the care and wellbeing of tamariki and whānau?

WHEN AND WHERE

16. It is important that the hearing locations reflect the mana wāhine kaupapa. A unique and significant way to reflect mana wāhine is to hold the hearings across the motu in locations that broadly reflect the rohe where Te Tiriti o Waitangi was signed by wāhine Māori. This view was supported by a number of claimants and the Tribunal in the Tūāpapa Hearings Paper.

17. Sites where wāhine Māori signed Te Tiriti o Waitangi include:

- (a) Waitangi and Kaitaia: Marama; Ereonora; Ana Hamiu; Te Marama; Takurua
 - (b) Waikato: Hoana Rautoto; Te Wairakau;
 - (c) Whanganui, Waikanae and Port Nicholson: Te Rere o Maki; Rangi Topeora; Te Kehu; Kahe Te Rau-o-Te-Rangi; Ngaraurekau; and
 - (d) Rangitoto: Pari.
18. These sites broadly align with: the upper North Island; central North Island; lower North Island and/or South Island.
19. The Tribunal has confirmed that the first hearing will be held in Northland at the Turner Centre in Kerikeri from 3-5 February 2021.
20. The Tribunal has directed that the second hearing will be held in a location in the central North Island from 24-26 February 2021. At this stage, suggestions for the second hearing are:
- (a) Tauranga Moana marae in Tauranga;
 - (b) Whāngārā Marae or Hauiti Marae; and
 - (c) Te Puia / Te Aronui-a-Rua Marae in Rotorua.
21. The Tribunal has indicated that one or two further hearings may be held in July, November or December 2021 and that one of these should be held in the South Island.

WHO AND HOW

Nature of hearings and role of counsel

22. The nature of the hearings will depart from formal processes and the role of counsel and will be more akin to oral hearings such as those that took place in the Military Veterans Kaupapa Inquiry and Ngā Kōrero Tuku Iho hearings.
23. Claimant counsel and Crown counsel will not file or present opening submissions and the Crown will not file or present evidence (however it may provide a written statement of the Crown's position at the outset).

24. The evidence will be presented by claimants and their witnesses and will combine the presentation of formal briefs of evidence (to frame the issues identified above) with less formal kōrero (particularly to allow for the rangatira/kuia voice, specialist kōrero and storytelling).
25. There will be no formal cross-examination of witnesses. Instead, the presentation of evidence will be followed by a mana enhancing pātai session led by the Tribunal. The Crown will have the opportunity to pose questions to the witnesses in a non-adversarial way.

Role of claimants and witnesses

26. The predominant and opening voices in these hearings will be those of the claimants and wāhine Māori who wish to participate.
27. Evidence at the hearings will ultimately be determined by claimants. However, it is envisaged that this will not solely consist of the presentation of formal briefs of evidence. Creative ways which capture less formal kōrero are encouraged (particularly to allow for the rangatira/kuia voice, specialist kōrero and storytelling to come through). For example, it may be that oral evidence is given by a facilitated panel of wāhine.
28. Evidence can also be taken as read or presented via AVL depending on the funding available, or due to other limitations on attendance. Livestream should be made available for all of the hearings except for those aspects for which claimants have sought and been granted a right of confidentiality.
29. The intention is that mana wāhine experts, rangatira and mana whenua, and whānau of the Te Tiriti signatories from or near the rohe where a hearing is held will lead the tikanga, kawa and evidence at that hearing. However, they will be supported by mana wāhine experts from outside the broader rohe where appropriate and practicable.
30. It is also intended that, where possible, claimants and witnesses attend the hearing closest to them. Therefore, claimants and witnesses only need to go to one hearing, unless their expertise is required at more than one hearing or unless the claimant group is a national group representing mana whenua who intend to participate across New Zealand.

Coordination and timetabling of oral evidence

31. The approach to the presentation of oral evidence at the hearings will be as inclusive as practicable and hearing time should be shared equally among those claimants who wish to present their evidence. However, it is acknowledged that the number of witnesses that present orally is limited by the hearing time allocated to the hearings.
32. It is envisaged that key expert witnesses will likely cover the broad themes.
33. As an initial step, claimants who wish to present oral evidence at the hearings should circulate the following information to claimant counsel via email:
 - (a) who will present the evidence;
 - (b) which hearing they will present at; and
 - (c) a very high level summary of their evidence and what key themes or matters they may cover.
34. Following the initial circulation of witnesses, claimant counsel will meet to discuss the coordination of evidence, including any duplication and possible collaboration.
35. Claimants will then confirm their proposed witnesses to present oral evidence and coordinating counsel will draft and circulate hearing timetables.

POSSIBLE TIMETABLE

Date	Step
6 Nov 2020	Draft Tūāpapa Hearings Plan circulated by coordinating counsel
18 Nov 2020	Claimants to file Tūāpapa Hearings Plan
23 Nov 2020	Claimants to circulate proposed witnesses for the presentation of oral evidence
27 Nov 2020	Claimant counsel telehui to discuss coordination of proposed oral evidence (i.e. duplication and possible collaboration)
4 Dec 2020	Claimants to confirm proposed witnesses for the presentation of oral evidence
11 Dec 2020	Draft Tūāpapa Hearings One and Two timetables circulated by coordinating counsel
18 Dec 2020	Timetable for Tūāpapa Hearing One due
20 Jan 2021	Tūāpapa Hearing One written evidence due
22 Jan 2021	Final timetable for Tūāpapa Hearing Two due
3-5 Feb 2021	Tūāpapa Hearing One (Turner Centre, Kerikeri)
10 Feb 2021	Tūāpapa Hearing Two Claimant evidence due
24-26 Feb 2021	Tūāpapa Hearing Two (Central North Island)
5 March 2021	Crown to seek leave to file evidence in reply to Tūāpapa Hearings One and Two
12 March 2021	Judicial Conference to discuss next steps and timetabling for remainder of Inquiry
July/Nov/Dec 2021	Tūāpapa Hearing Three / Four (Lower North Island / South Island)