

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

TE MANUTUKUTUKU

Kia puta ki te whai ao ki te ao mārama

From the world of darkness moving into the world of light

Issue 80



Waitangi Tribunal

Kei Roto | Inside

E rere ana ngā mihi	1
From the Acting Chairperson	2
From the Director	2
Whakatau mai rā e te Kaiwhakawā hou	3
Staff Profiles	4
Kura Kaupapa Urgent Inquiry	5
Te Paparahi o Te Raki Report Released	6
Waikanae Report Released	8
Homelessness Report Released	10
Whakatika ki Runga Report Released	11
Ngā mihi o te tau hou Māori	12

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E rere ana ngā mihi

*Tirama ana mai ngā whetū o te ata
Ko Puanga kei runga
Ko Takurua kei te rāwhiti
Koia ko Matariki e tiaho iho nei
Matariki e ārau ana*

*Ka paopao te manawa o te tangata
Ka tūtuki te kupu o te ngutu
Ki tērā mokopuna o te Urewera
Ki tērā rūnanga o te Rāwhiti
I te tāoki mai hei Kaiwhakawā Matua*

*Huri atu te titiro ki te kāhui whetū
He tohu pai mo te tau hou
Nōreira e te wānanga
E rere ana te mihi
E rere ana te aroha
E tau ana*



Chief Judge Wilson Isaac

At the end of April, Wilson Isaac stepped down as chief judge of the Māori Land Court and chairperson of the Waitangi Tribunal. His retirement bookends a long leadership of both institutions that began in September 2009. The then Minister of Māori Affairs, Dr Pita Sharples, observed at the time that ‘Chief Judge Isaac exhibits strong leadership qualities and has [the] standing in the community . . . required to be a successful Chairperson.’

Chief Judge Isaac is Ngāti Porou on his mother’s side and Tūhoe and Ngāti Kahungunu on his father’s side. He grew up in Waimana in Te Urewera and studied law at the University of Otago, becoming the first member of his family to pursue a law degree.

After graduating, Chief Judge Isaac practised in Gisborne, specialising in

Māori land law and family law, and he was the first Māori appointed as counsel for the child in Gisborne. He considers that the Māori values instilled in him by his parents served him well in both land and family law.

Chief Judge Isaac joined the Māori Land Court bench in 1994. His initial Tribunal appointment came in 1996 as the presiding officer of the Mohaka ki Ahuriri Inquiry, the first of the district inquiries using the ‘casebook’ method. This allowed him to help pioneer a new Tribunal process for hearing historical claims.

Chief Judge Isaac subsequently led the Te Tau Ihu and National Park District Inquiries and, alongside these historical inquiries, he presided over the Napier Hospital and Health Services and Mana Ahuriri Mandate Inquiries.

► To page 12

From the Acting Chairperson

TIRAMA ana mai, ngā whetu o te ata, ko Puanga kei runga, Takurua kei runga, koia ko Matariki e tiaho iho nei. Matariki e ārau ana! Ngā mihi me ngā hua nui o te tau hou Māori ki a tatou.

Tēnā tātou. It is a privilege to be introducing this issue of *Te Manutukutuku* as the acting chairperson of the Waitangi Tribunal. The former chairperson, Chief Judge Wilson Isaac, recently celebrated his 70th birthday, completing his term as the chief judge of the Māori Land Court and the chairperson of the Tribunal. Our tribute to him features in this issue, and we continue to progress the work commenced under his leadership.

Since the last issue of *Te Manutukutuku*, the Tribunal has issued four new reports on the claims before us.

December 2022 saw the release of two major reports in our ongoing district inquiries. *Waikanae* is a report on the claims of Te Ātiawa/Ngāti Awa

heard in the Porirua ki Manawatū Inquiry, the third of the inquiry's reports on the claims of the iwi of this region. It was joined on 23 December by the first part of *Tino Rangatiratanga me te Kāwanatanga*, the report on claims heard in stage 2 of the Paparahi o Te Raki Inquiry. Both reports are summarised within this issue and are available on the Tribunal's website.

In February, the Tribunal also released the *Report on Whakatika ki Runga*, a mini inquiry into claims concerning funding for Tribunal claimants that was heard as the commencement of the Te Rau o te Tika Kaupapa Inquiry into the justice system.

Finally, in May the housing kaupapa panel released *Kāinga Kore* on Māori homelessness. While this report is now with the Government, the inquiry is preparing for the main part of its hearing programme in 2024.

The Tribunal has also commenced

an urgent inquiry into claims filed concerning kura kaupapa Māori and current Crown education policy affecting them. Hearings for this inquiry took place over April and May and were conducted bilingually, with all of the claimants' evidence and submissions being given in te reo Māori. It is anticipated that the Tribunal's report will reflect this hearing process and be the first Tribunal report written predominantly in te reo Māori.

It has been a full start to the year, and I trust that this issue will bring you up to date with our current work programme.



Judge Sarah Reeves
Acting Chairperson
Waitangi Tribunal



From the Director

TĒNĀ TĀTOU. As we herald te Tau Hou Māori, the Māori New Year, we acknowledge those who have passed on, celebrate new beginnings and the fruits of the present, and prepare for the busy year ahead.

Since November 2022, we have held a total of 26 hearings and judicial conferences across nine active district, kaupapa, and urgent Tribunal inquiries. The rest of 2023 sees continuation of a packed hearing and events calendar.

In terms of kaupapa inquiries, the unit continues to assist the Tribunal to implement new innovations across the work programme, including the adoption of an accessibility protocol in

the Health Inquiry, parts of which are being adopted by other Tribunal panels; the introduction of pou tikanga for the Justice System Inquiry; and preparation and planning for the delivery of an inquiry report in te reo Māori.

I take this occasion to extend my grateful thanks to the staff of the Waitangi Tribunal Unit for their ongoing hard work and dedication and for the way that they quickly adapt to the changing landscape of our inquiry programme.

The environment is also changing, and the unit is responding to this by upgrading our tools and technology, launching a social media strategy, modernising and standardising our

live streaming platform, and working on refreshing the Tribunal's website.

In terms of new beginnings, in April we welcomed new Māori Land Court Judge Alana Thomas and Tribunal member Professor David Williams to the unit with a pōwhiri.

I look forward to celebrating te Tau Hou Māori and all that it may bring.



Steve Gunson
Pae Matua/Director
Waitangi Tribunal
Māori Land Court



Whakatau mai rā e te Kaiwhakawā hou

I TE RĀ 22 o Māehe 2023, i kopoua ai e Minita Jackson te uri o Ngāpuhi, o Ngāti Rēhia, o Ngāti Kuri anō hoki, a Alana Miriana Thomas, hei kaiwhakawā o Te Kooti Whenua Māori.

I puta te ihu o Kaiwhakawā Thomas i te Whare Wānanga o Tāmaki Makaurau, i a Waipapa Taumata Rau i te tau 2008. Nōna i reira, ko ia tētahi o ngā kaihautū o te waka o Te Rākau Ture, he kaihoe anō hoki o te waka o Ngā Tauria Māori. Whai muri i tana whiwhinga tohu, i kotahi atu ia ki te whai wheako ki te tari o Te Kooti Whenua Māori ki Whangārei, noho tahi ai me ngā Kaiwhakawā o taua taima rā, ko Kaiwhakawā Spencer rāua ko Kaiwhakawā Ambler.

I a ia e tū ana hei rōia, he rite tonu tā Kaiwhakawā Thomas whakakanohi i ngā iwi me ngā hapū puta noa i te motu mō ngā kaupapa e whai take nei ki ngā mōtika o te iwi Māori, pērā i ngā take Tiriti, i ngā take taiao, i ngā take whenua, i ngā take moana, tae rā anō hoki ki ngā take mō ngā tikanga me te reo Māori. I te tau 2017, i whakatūria ai e Kaiwhakawā Thomas tōna ake kamupene, ko Kaupare, hei waka kawē kaupapa mō āna kiritaki kia hoea tikahia ai ā rātou take ki mua i te Kōti, kia tae ai rātou ki te one o momoho. Kauparehia te huarahi pākehā, whāia te huarahi Māori.

He wahine ngākaunui a Kaiwhakawā Thomas ki te reo Māori me tana manawa piharau, tana manawa kai roke kia ora mai te reo Māori i te ao ture. Nā runga anō i tēnā wawata ōna, i tuhi pukapuka a Kaiwhakawā Thomas rāua ko Corin Merrick, ko *Kia Kakano Rua te Ture* tōna ingoa, ko te reo Māori tōna whai, waihoki, ko Kaiwhakawā Thomas tētahi o ngā mema o Te Hunga Rōia Māori i timata ai i te kaupapa o Te Kura Rōia Māori, he Kura Reo tēnā mō te ao ture. He māmā a Kaiwhakawā Thomas ki āna tamariki tokorua.

Nau mai rā, e te Kaiwhakawā hou, e Kaiwhakawā Thomas.



Judge Alana Thomas

ON 22 March 2023, the Minister of Māori Development, Willie Jackson, announced the appointment of Alana Miriana Thomas (Ngāpuhi, Ngāti Rēhia, Ngāti Kuri) as a permanent judge of the Māori Land Court.

Judge Thomas graduated from the University of Auckland in 2008. While studying, Judge Thomas was the president of the Māori Law Students Association and was an active member of Waipapa Taumata Rau, the Māori Students Association. Following her graduation, Judge Thomas gained experience at the Māori Land Court in Whangārei alongside the sitting judges of the Taitokerau district, Judge Spencer and Judge Ambler.

During her legal career, Judge Thomas represented several iwi and hapū throughout New Zealand on matters relating to the rights of te iwi

Māori and, more specifically, to Te Tiriti o Waitangi, the environment, the land, the sea, tikanga Māori, and te reo Māori. In 2017, Judge Thomas established her own law firm, Kaupare Law Limited, *kauparehia te huarahi Pākehā, whāia te huarahi Māori*.

Judge Thomas is a strong advocate for the promotion of te reo Māori and has been passionate in her pursuit to ensure that the language is recognised and used in the law. She is the co-author of the book *Kia Kakano Rua te Ture*, a resource designed to assist legal practitioners in the use of te reo Māori. Judge Thomas was also one of the members of the Māori Lawyers Association responsible for the commencement of Te Kura Rōia, a full immersion reo Māori course designed specially for the legal profession.

Welcome and congratulations, Judge Thomas. ☆

Staff Profiles

Kesaia Walker

Mālō e lelei, tēnā koutou katoa!

Kesaia Walker is the chief historian at the Waitangi Tribunal Unit. She was brought up by her late parents, Liliani Leveni Waigh (of Tatakamotonga and Pelehake, Tonga) and Paul Waigh (of Roxburgh), in Tūranganui-a-Kiwa (Gisborne), an area with rich Māori and Pākehā history. Kesaia says 'I grew up in the shadow of Tītirangi Maunga (Kaiti Hill) – the site of Cook's historic landing in 1769'. Te reo me ona tikanga Māori were the norm in her primary school, and she thought the whole of Aotearoa was the same.

Kesaia credits her fifth-form history teacher, Ray Schaffer, with sparking a love for New Zealand history that eventually took her to Victoria University. She gained a master of arts with distinction (history) in 2010, having researched the story of the Rongowhakaata whare whakairo Te Hau-ki-Tūranga in Te Papa Tongarewa.

After graduating, Kesaia started at the Waitangi Tribunal Unit, initially providing research support for researchers on the Te Rohe Pōtae District Inquiry.

Chief Historian Kesaia Walker



Kesaia gained a permanent position in 2011 and spent nearly a decade as a researcher, completing research commissions for a range of district and kaupapa inquiries. She says she loved any opportunity to do primary-source historical research. In 2017, Kesaia was appointed principal researcher/analyst in the research services team. In 2021, she left the unit to take up a role at the Ministry for Pacific Peoples.

Kesaia was excited to return to the unit as chief historian in September 2022. Having a chief historian to provide expert advice and uphold quality assurance standards, in her view, gives confidence to researchers, report writers, presiding officers, panels, and parties about the robustness of the Tribunal's inquiry process. She says that she is always thinking about how institutional knowledge from the past can inform and guide present-day practice, and she acknowledges past chief historians Richard Moorsom and Cathy Marr for their legacies: 'I am grateful every day for what they left behind for me and all of us to build on.'

Temitope Kuti

Temitope Kuti (known as Tope) was born and raised in Igbogbo, a town on the eastern periphery of the Nigerian metropolis Lagos, home to more than 20 million people. After leaving high school, Tope studied for a bachelor of laws (honours) at Lagos State University, followed by a master of international trade and investment law at the University of the Western Cape in South Africa. Tope was admitted to the Nigerian Bar in 2013 and has worked in various capacities, including as a public prosecutor and commercial law attorney in Nigeria, as well as an assistant lecturer in South Africa.

Tope arrived in New Zealand in



Researcher/Analyst Temitope Kuti

2019 to commence a doctorate in law at Victoria University under the supervision of Tribunal member Professor Susy Frankel. When he began this study, the first thing his supervisors told him was that he should read the Wai 262 report *Ko Aotearoa Tēnei* because of its relevance to his research. As Tope describes, 'reading through the two volumes of the report made me keen to know more about the Tribunal and left me with a feeling that I would get to work here someday.'

That hunch came true in January of this year, when Tope (now near the end of his study), joined the unit as a researcher/analyst in the inquiry facilitation team. Tope has enjoyed the fast pace and mental challenges of the work and his team's camaraderie. He aspires to do further academic research in the future and notes 'it's helpful that the work we do in the unit involves a lot of writing... these skills will always be relevant.'

Tope is currently working on the Kura Kaupapa Urgency Inquiry (Wai 1718) and the Constitutional Kaupapa Inquiry (Wai 3300) and has previously worked on the Military Veterans Inquiry (Wai 2500). ☆

Kura Kaupapa Urgent Inquiry

Nō te 2021 ka tukua e Tākuta Cathy Dewes, upoko-takirua o Te Rūnanga Nui o Ngā Kura Kaupapa Māori, tētahi menemana ki te tauākī kerēme o mua a Te Rūnanga Nui. Ko te aronga matua o tēnei kokoraho kua whakarerekētia, ko te tukanga whakahou 'Ngā Kura o Āpōpō' a te Karauna, arā e whakapaetia ana he mea aukati tēnei tukanga i ngā Kura Kaupapa Māori, otirā e aro pū ana ki te wā i muri i te whakahounga o te kaupapa here i te 2018. I te Hakihea o 2022 ka whakaetia e Kaiwhakawā Sarah Reeves, te Upoko Tuarua o te Rōpū Whakamana i te Tiriti o Waitangi, te tono kōhukihuki whai muri i te hui takawaenga i ārahina e te Rōpū Whakamana ki waenganui i ngā rōpū. Whai muri ake anō, ka whakaetia ngā rōpū kerēme kia noho hai rōpū whaipānga.

Ko Kaiwhakawā Rachel Mullins rātau ko Derek Fox, ko Ahorangi Susy Frankel, ko Ahorangi Rawinia Higgins, ko Herewini Te Koha ngā mema o te pae i tohua ki tēnei pakirehua.

E toru ngā hui i tēnei tau i tū i ngā marama o Paengawhāwhā me Haratua – ki te Marae o Hoani Waititi i Tāmaki Makaurau, ki Te Kura Kaupapa Māori o Ngā Mokopuna i Te Whanganui-a-Tara, me te Tari o Te Rōpū Whakamana i te Tiriti o Waitangi i Te Whanganui-a-Tara. I whakarongo te pae ki ngā kuia me ngā kaumātua, ngā raukura nō ngā Kura Kaupapa Māori, ngā āpiha nō te ao mātauranga, tae atu ki ngā mātanga. I huri haere te pae ki te tiroiro ki te takotoranga o Te Kura Kaupapa Māori o Hoani Waititi me Te Kura Kaupapa Māori o Ngā Mokopuna. Ka tū ngā tāpaetanga whakakōpani i te mutunga o Pipiri ki te Marae o Waiwhetū i Te Awakairangi.

Mutu ana tērā, ka timata te pae ki te whakarite i tana pūrongo ka tuhia ki te reo Māori arā he tuatahitanga mō te Rōpū Whakamana i te Tiriti o Waitangi, nō reira he kaupapa nui whakarahara.



Ka tiro atu ngā tamariki mokopuna o Te Kura Kaupapa Māori o Hoani Waititi Marae me a rātou kaiako hei matapihi ki te ao

Kura Kaupapa kaiako and tamariki looking through the window of the Hoani Waititi whareniui at the first Kura Kaupapa Māori (Dewes) Urgent Inquiry hearing

Kua whai wāhi mai ngā mātanga reo ki te āwhina i te pae, me te tae ā-tinana atu ki ngā hui whakawā.

IN 2021, Dr Cathy Dewes, the co-chair of Te Rūnanga Nui o ngā Kura Kaupapa Māori, lodged an amendment to a previous statement of claim by Te Rūnanga Nui. This amended claim primarily concerned the Crown's 'Tomorrow's Schools' reform process, focusing on the period following a refresh of the policy in 2018. It alleged that the reform process had prejudicially affected Kura Kaupapa Māori. The Waitangi Tribunal's then-deputy chairperson, Judge Sarah Reeves, granted the application urgency in December 2022, after a Tribunal-led mediation between the parties. Three claimant groups were also later granted interested-party status.

The panel members appointed to this inquiry are Judge Rachel Mullins (presiding), Derek Fox, Professor Susy

Frankel, Professor Rawinia Higgins, and Herewini Te Koha.

Three hearings occurred in April and May this year – at Hoani Waititi Marae in Auckland, at Te Kura Kaupapa Māori o ngā Mokopuna in Wellington, and at the Tribunal's offices in Wellington. The panel heard from kuia and kaumātua, raukura of Kura Kaupapa Māori, education officials, and experts. They also conducted site visits of Te Kura Kaupapa Māori o Hoani Waititi and Te Kura Kaupapa Māori o ngā Mokopuna. Closing submissions were heard in late June at Waiwhetū Marae in Lower Hutt.

The panel are now preparing their report, which will be primarily in te reo Māori, a first for the Tribunal and therefore a significant milestone in our history. Mātanga reo (Māori-language specialists) have been engaged to assist the panel in this process, and their involvement has included attending hearings. ☆

Te Paparahi o Te Raki Report Released

ON 23 December 2022, the Tribunal released the first part of its stage 2 report on the Te Paparahi o Te Raki District Inquiry (Wai 1040). The pre-publication report, *Tino Rangatiratanga me te Kāwanatanga*, addressed the treaty* claims of iwi, hapū, whānau, other groups, and individuals of Te Paparahi o Te Raki: the great land of the North. This release follows the Tribunal's stage 1 report *He Whakaputanga me te Tiriti: the Declaration and the Treaty* (2014), which considered whether Bay of Islands and Hokianga rangatira ceded sovereignty to the British Crown when they signed te Tiriti o Waitangi in February 1840. The Tribunal concluded that Te Raki rangatira did not consent to the Crown acquiring sovereignty and having authority to make and enforce law over their people and territories.

In this first part of its stage 2 report, the Tribunal considered nineteenth century issues arising from 415 treaty claims in the inquiry district. Twenty-six hearings took place between March 2013 and October 2017. Claimants organised themselves into seven taiwhenua: Hokianga, Takutai Moana, Te Waimate Taiāmai ki Kaikohe, Whangaroa, Mangakāhia, Whāngārei, and Mahurangi and the Gulf Islands. The inquiry panel comprised Judge Craig Coxhead (presiding officer), the late Professor Ranginui Walker, Dr Ann Parsonson, Dr Robyn Anderson, and the late Dr Kihī Ngatai.

The relationship between Te Raki Māori tino rangatiratanga and the Crown's kāwanatanga formed a central focus of the claims. Shortly after

signing te Tiriti, the Crown would declare sovereignty over the North Island and then all of New Zealand in two proclamations issued by the Queen's representative, Captain Hobson, in May 1840. The wording of these proclamations made clear that the British considered that a 'cession' of sovereignty had taken place, and they heralded the introduction of foreign legal concepts not explained to Te Raki rangatira. The Tribunal concluded that, when negotiating te Tiriti, the Crown failed to clarify that it intended both to establish a government and legal system under its sole control and to assert sovereignty over the whole country.

Claimants also took issue with the Crown's policies for the investigation of pre-1840 land transactions. Prior to 1840, Te Raki Māori transacted land with settlers according to their own laws. Rangatira had also expected the Crown to seek their agreement on the nature and shape of any investigation into these transactions. After 1840, the Crown imposed processes for determining land rights, supplanting the tikanga of Te Raki Māori without their consent. The Tribunal found that the Crown's imposition of English legal concepts, its grant of absolute freehold title to settlers, and its own taking of 'surplus' lands, were effectively a rāpatu (confiscation) of thousands of acres. Frustration with the trajectory of the treaty relationship lay behind Hōne Heke Pōkai's flagstaff fellings of late 1844 and early 1845. The Tribunal described these fellings as a challenge to the Crown's encroachment on Ngāpuhi tino rangatiratanga and a signal that the Crown should meet with them and resolve issues of relative authority. However, the Crown failed to consider Heke's and others' underlying concerns and instead took military action against them. During

the Northern War, the Crown, among other failures, initiated attacks on pā and kāinga; made the surrender of land a condition of peace; and did not consider the welfare of non-combatants. The Tribunal concluded that the Crown's actions during the Northern War had severe short- and long-term effects on Ngāpuhi.

Having faced armed resistance in Te Raki and other parts of the North Island, George Grey envisaged the Crown asserting control over entire districts through large-scale purchases ahead of settlement, the payment of nominal prices, and the restriction of Māori to small reserves required for their subsistence. From 1854, Donald McLean and purchase commissioners employed by the Native Land Purchase Department applied Grey's framework in Te Raki. The Tribunal found that the Crown failed to act reasonably and in good faith to engage with Te Raki Māori about the alienation and settlement of their lands. The Crown also failed to even uphold its own standards – clearly articulated at the time – and it prioritised the interests of settlers and the purchase of large areas of land at low cost, the Tribunal found.

Alongside its purchasing policies, the Tribunal found that the Crown's constitutional changes undermined the treaty relationship in Te Raki. These changes included the establishment of provincial and national representative assemblies, the grant of responsible government to the colonial ministries from 1856, and the transfer of authority for Māori affairs from the imperial to the colonial government. In taking these steps, the Tribunal found that the Crown had failed to provide safeguards to secure Te Raki treaty rights. By the mid-1860s, the settler government had introduced a Native Land Court that individualised

* As in the report, we have here used 'te Tiriti' to refer to the Maori text, 'the Treaty' to refer to the English text, and 'the treaty' to refer to both texts together or to the event as a whole without specifying either text.



The panel for stage 2 of the Te Paparahi o Te Raki Inquiry during hearing week 15, September 2015. From left: Judge Craig Coxhead, the late Professor Ranginui Walker, Dr Ann Parsonson, Dr Robyn Anderson, and the late Dr Kihī Ngatai. Photograph by John Miles.

title to Māori customary land and undermined community control over whenua, eroding the cultural, political, and economic organisation of hapū. The Tribunal found that the Crown's policies also led to large-scale land loss throughout the district.

In the face of the Crown's destructive policies, Te Raki Māori leaders pursued political initiatives to assert their tino rangatiratanga. They established committees to mediate internal disputes and manage relationships with settlers and the colonial government; engaged with other northern tribes to establish regular regional parliaments at Waitangi, Ōrākei, and

elsewhere; and sought accommodation with the Kingitanga.

During the 1890s, Te Raki Māori took lead roles in the Kotahitanga movement's attempts to establish a national Māori parliament. However, the Crown rejected or ignored their proposals for Māori self-government and was unwilling to recognise any significant transfer of authority from colonial institutions. The Tribunal concluded that, in doing so, the Crown refused a historically unique opportunity to provide in New Zealand's constitutional arrangements for Māori tino rangatiratanga at a national level. It found that the Crown's failure to

recognise and respect Te Raki rangatiratanga over this period breached the treaty and its principles.

The Tribunal recommended that the Crown acknowledge the treaty agreement entered into with Te Raki rangatira in 1840 and that it apologise for its treaty breaches. It also recommended that the Crown return all Crown-owned land in the district to Te Raki Māori; that it provide compensation; and that it enter into discussions with Te Raki Māori to determine appropriate constitutional processes and institutions to recognise, respect, and give effect to their treaty rights at the national, iwi, and hapū levels. ☆

Waikanae Report Released

ON 14 December 2022, the Tribunal released *Waikanae: Report on Te Ātiawa/Ngāti Awa Claims* in pre-publication format. The report is the third issued so far in the Porirua ki Manawatū District Inquiry (Wai 2200). *Waikanae* considered 17 claims brought on behalf of Te Ātiawa/Ngāti Awa individuals, whānau, hapū, and iwi organisations. These concerned land, cultural sites, and resources in the iwi's traditional rohe on the west coast of the North Island, which covers modern-day Waikanae and Paraparaumu, along with interests as far south as Paekākāriki.

The Tribunal heard these claims over the course of five hearings across 2018 and 2019. It visited several sites of importance to Te Ātiawa/Ngāti Awa, including Kenakena Pā, where 20 Waikanae rangatira signed the Treaty in May 1840. The Tribunal also visited St Luke's Church and Te Ātiawa/Ngāti Awa rangatira Wi Parata's grave at Ruakohatu Urupā. A leader in the Kotahitanga Parliament movement, Wi Parata was also the plaintiff in the landmark case *Wi Parata v Bishop of Wellington* (1877), where Justice Prendergast infamously described the Treaty as a 'simple nullity'.

In an 1846 exchange of letters with Te Ātiawa/Ngāti Awa rangatira, Governor George Grey promised amity and collaboration with the iwi, noting Queen Victoria's wishes that he do 'all in [his] power' to ensure their happiness and safety. Despite these assurances, during the nineteenth and twentieth centuries Crown acts and omissions had a devastating impact on Te Ātiawa/Ngāti Awa.

The Crown conceded that its past acts, including the individualisation of collective Māori land titles, which made Māori land susceptible to fragmentation and sale, had breached the Treaty. The Crown also conceded that



The view from Whakarongotai Marae in Waikanae, where two Te Ātiawa/Ngāti Awa hearings were held, overlooking Hemi Matenga Memorial Park

it had undermined tribal structures, and that its actions had left Te Ātiawa/Ngāti Awa virtually landless. The Tribunal accepted these concessions and identified several other important Treaty breaches.

The Tribunal found that the Crown had breached the Treaty in its 1858

and 1859 purchases of the Wainui and Whareroa blocks by failing to inquire into who owned the land before purchasing, by imposing the purchases on non-sellers without consent, and by making inadequate reserves for the present and future needs of resident Māori. In the 1860s, the Crown had



Stained-glass window at St Luke's Church in Waikanae, showing rangatira Wi Parata Te Kakakura (left) and the Bishop of Wellington, Octavius Hadfield (right)

breached the Treaty when it threatened Waikanae tribal leaders with land confiscation if they continued to support the Māori King movement.

The Crown's native land laws between 1870 and 1900 also breached Treaty principles. They converted tribal customary rights into individual rights able to be disposed of without reference to the collective. Those individuals had the power to partition or sell but no power at the time to establish a body to manage their lands collectively. The Crown failed to give a proper remedy when Te Ātiawa/Ngāti Awa petitioned Parliament about their grievances in the 1890s. It also failed to give Māori landowners the same access to cheap development loans as non-Māori. As a result of these breaches, a rapid loss of land occurred between 1891 and 1930, by which point most Te Ātiawa/Ngāti Awa owners had lost nearly all their land holdings. Māori land ownership at Waikanae and Paraparaumu was further reduced

in the 1960s by the Crown's failure to prevent the compulsory sale of Māori land for the non-payment of rates, even where the land did not produce revenue. This was another breach of the Treaty.

In the case of the Parata Native Township, the Crown breached the Treaty in a number of ways, including by breaking faith with the original agreement and changing the relevant native township law in 1910, which allowed the inalienable township sections to be sold.

The Crown further breached the Treaty by its compulsory public works takings of land for the Paraparaumu Aerodrome (now the Kāpiti Coast Airport) in the 1930s and 1940s. The Crown then failed to protect the interests of the original owners when privatising the airport in 1995, and it failed to properly consider offering surplus land back to the original owners before selling the airport to a private company. The Crown conceded that it

breached the Treaty by failing to protect the original owners' rights when the airport company sold land in 1999.

The Tribunal also found that the alienation of the Waikanae riverbed as a result of individual titles and surveying practices further breached the Treaty, with the iwi's control of the river being undermined by actions of local government enabled under legislation.

The Crown breached Treaty principles through the Town and Country Planning Act 1953, which allowed the Waikanae town centre to be sited on top of a Te Ātiawa/Ngāti Awa papakāinga without adequate consultation or consideration of Māori interests. On balance, the Tribunal also found that the Crown acquired the land for the Hemi Matenga Memorial Park, which is on the hillside above Waikanae township, in breach of the Treaty, and that today the claimants are unable to exercise tino rangatiratanga and kaitiakitanga over this taonga, as the Treaty partnership requires.

To address the harm caused by the Crown's Treaty breaches, the Tribunal recommended that the Crown urgently negotiate a Treaty settlement with Te Ātiawa/Ngāti Awa. The Tribunal also recommended that the Crown consider restoring the legal ownership of the Hemi Matenga Memorial Park and implementing a co-governance arrangement for its management. It further recommended that the Crown amend the offer-back procedures of the Public Works Act 1981, which prejudiced the former owners of Kāpiti Coast Airport lands.

The Porirua ki Manawatū panel comprises Deputy Chief Judge Dr Caren Fox, Sir Douglas Kidd (retired as of 2023), Dr Grant Phillipson, Tania Simpson, and Dr Monty Soutar. The panel is currently in the process of hearing the claims of Ngāti Raukawa and affiliated groups. After the volume addressing those claims is released, the focus will turn to a report on district-wide issues and claims. ☆

Homelessness Report Released

ON 19 May 2023, the Tribunal released *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness* in pre-publication format. Its release concludes the first stage of this kaupapa inquiry.

The Tribunal formally initiated the Housing Policy and Services Kaupapa Inquiry in July 2019, and it confirmed the following year that stage 1 would limit its focus to contemporary Māori homelessness and the Crown's strategies to address it. That decision reflected the wishes of the parties and recognised homelessness as the most acute and urgent housing issue Māori were facing, especially with the advent of the COVID-19 pandemic.

Seventy-nine claims were eligible for this stage and another 21 parties were granted interested party status. The Tribunal held five hearings between March and November 2021, with the panel comprising Judge Craig Coxhead (presiding), Dr Paul Hamer, Basil Morrison, and Prue Kapua. The participating Crown agencies were Kāinga Ora, the Ministry of Housing and Urban Development, the Ministry of Social Development, Te Puni Kōkiri, and the Department of Corrections.

In stage 1 of the inquiry, the Tribunal considered Crown policies and strategies from 2009 (when the Crown introduced its first definition of homelessness) to 2021. It also examined the impacts of homelessness on specific groups – Māori who were living on Māori-owned land and in rural areas, rangatahi, released prisoners, and gang whānau.

The report included a series of vignettes highlighting the lived experience of claimants and witnesses. As the Tribunal noted: 'Their evidence has provided insight into what it means to be homeless, to support



The late Ricky Houghton, claimant and chief executive of He Korowai Trust, pictured outside the trust's papakāinga. Mr Houghton's work helping homeless whānau is highlighted in one of the vignettes contained within Kāinga Kore. Photograph by Christel Yardley.

others facing homelessness, or to set up community services to tackle local housing problems – often on a shoestring budget and with negligible Government support.'

The Tribunal found that the Crown had breached its Treaty obligations between 2009 and 2021 in several ways. These included the inadequacy of its definition of homelessness in 2009, its ongoing failure to collect adequate data about homelessness, and its failure (until the housing crisis became abundantly apparent in 2016) to take any significant action to address Māori homelessness.

The Tribunal is yet to hear evidence and submissions on several key housing-related issues, including the historical provision of housing to Māori, the longstanding barriers to building on

whenua Māori, and the impacts of colonisation. Thus, while acknowledging the connection of Māori homelessness to broader issues such as these, the Tribunal was not in a position to make findings on them. They are matters for the next stage of the inquiry and for a subsequent report.

Due to this relatively narrow scope, the Tribunal made only a single recommendation: that the Crown and claimants work in partnership to develop a new definition of homelessness that incorporates Māori perspectives.

During the next inquiry stage, the Tribunal may revisit the subject of homelessness to gauge whether there has been any improvement in the Crown's response and to make further recommendations for improving housing for Māori. ☆

Whakatika ki Runga Report Released



The Justice System Inquiry panel with staff from the Waitangi Tribunal Unit and Pātaka Art & Museum. From left: Dr Ruakere Hond, Te Aurere Coker and Jaquan Nin (gallery assistants), Dr Paul Hamer, Matariki Wehi, Dr Hana O'Regan, Judge Carrie Wainwright, Heaven-Leigh Teofilo, Ana Sciascia (director, Pātaka Art & Museum), and James Carter.

ON 17 February 2023, the Tribunal released its *Report on Whakatika ki Runga, A Mini-Inquiry Commencing Te Rau o te Tika: The Justice System Inquiry*. As the title reflects, the panel considered it necessary to inquire into the issue of claimant funding before addressing the wide range of claims made about the justice system.

Hearings for this mini inquiry took place in the latter half of 2022 in Wellington and Porirua. The Crown called 11 witnesses from eight Crown agencies, all of which have been lead agencies in Tribunal kaupapa inquiries. The Tribunal also heard from over 40 claimant witnesses.

Claimants have long been concerned about their ability to participate in the Tribunal's inquiries, particularly those where Crown forest land is not at issue and funding from the Crown

Forestry Rental Trust is thus unavailable. *Whakatika ki Runga* examined whether the Crown had provided a sufficient alternative funding regime for claimants in the Tribunal's unfolding programme of kaupapa inquiries, which address issues of national significance for Māori. The Tribunal found that it had not.

The Tribunal concluded that the Crown had failed to discharge its Treaty duty to ensure that Māori can access Tribunal processes easily and in a culturally comfortable way. The Tribunal recommended that the Crown co-design suitable funding arrangements with Māori and, in the interim, that it impose a standardised protocol across all agencies leading Crown responses to kaupapa and contemporary inquiries. Within this interim protocol, lead agencies would

be required to meet the claimant community's direct costs of attending hearings on an in-advance basis rather than by reimbursement.

The Tribunal also recommended that the Waitangi Tribunal Unit provide for all written evidence and submissions filed in te reo Māori to be translated into English as of right, with no cost or inconvenience to the document's creator.

Although the Tribunal found administrative shortcomings with the provision of legal aid in Tribunal proceedings to be inconsistent with the Crown's Treaty obligations, it reserved any recommendations on the Legal Services Act 2011 for a later report.

Since May, the inquiry is now into its next stage – Te Tūāpapa o te Tika – which consists of a series of wānanga about tikanga relating to justice. ☆

Ngā mihi o te tau hou Māori



Rebecca Davies-Cowie

A linocut by Christchurch artist Rebecca Davies-Cowie showing the Matariki star cluster rising over Aoraki / Mt Cook

MATARIKI is upon us once again. An abbreviation of ‘Ngā Mata o te Ariki Tāwhirimātea’ (‘the eyes of the god Tāwhirimātea’), Matariki

refers to Tāwhirimātea casting his eyes into the heavens after his siblings had separated their parents, Ranginui and Papatūānuku. The annual appearance

of the stars, also known as the Pleiades, signals the Māori New Year. It is a time for remembrance, reflection, and celebration. ☆

◀ From page 1

Since 2012, he has also led the National Freshwater and Geothermal Inquiry.

While acting as a resident Māori Land Court judge in (principally) Tairāwhiti and Takitimu, Chief Judge Isaac served periodically as a judge of the High Court of Niue and the High Court of the Cook Islands.

In recent years, Chief Judge Isaac has played a central role in steering the Tribunal through a period of transition as the remaining historical district

inquiries have been completed and a programme of kaupapa inquiries (inquiries into claims of national significance for Māori) has begun.

Chief Judge Isaac laid out his vision for the kaupapa programme in an influential 2015 memorandum and he is also the presiding officer of the first kaupapa inquiry, concerning military veterans (Wai 2500). In addition, he led the development of the Tribunal’s 2014–25 *Strategic Direction*, which sets

out how the inquiry programme will be progressed.

Chief Judge Isaac has always mixed his legal career with a love of the outdoors. He feels privileged to be able to go ‘from the urban jungle back to the relative peace and tranquillity on the edge of the bush.’

Chief Judge Isaac remains the presiding officer of the Military Veterans and National Freshwater and Geothermal (Wai 2358) Inquiries. ☆