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 79

Waitangi Tribunal

Kei Roto | Inside

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Mana Wāhine Inquiry

The Mana Wāhine Kaupapa panel outside Waiwhetū Marae, Lower Hutt. From left: Kim Ngarimu, Professor Linda Tuhiwai Smith, Deputy Chairperson Judge Sarah Reeves, Dr Robyn Anderson and Dr Ruakere Hond.

On 23 September 2022, the tūāpapa phase of the Mana Wāhine kaupapa inquiry concluded at Ngā Hau e Whā Marae in Ōtautahi. The hearing was the last of six, the first having been held in February 2021, and they focused on tikanga relating to wāhine and the roles and experiences of wāhine in te ao Māori before colonisation.

The panel, comprising Judge Sarah Reeves, Professor Linda Tuhiwai Smith, Dr Ruakere Hond, Dr Robyn Anderson, and Kim Ngarimu, heard from wāhine around the motu, having earlier sat in Kerikeri, Ngāruawāhia, Whangārei, Whakatāne, and Lower Hutt.

Witnesses included kuia, kaumātua, māmā, kairangahau, rangatahi and kōtiro, kaikaranga, tā moko practitioners, kaiwaiata, activists, health professionals, wāhine with experiences in gangs, and many others. As witness Kararaina Te Ira (Ngāti Raukawa ki te Tonga) told the panel, wāhine Māori are 'multifaceted' and brought multiple experiences to their evidence.

The panel is currently considering how to utilise the evidence from the tūāpapa phase. That evidence is intended to establish a baseline against which claims of Crown breaches of Te Tiriti o Waitangi can be assessed throughout the rest of the inquiry.

The inquiry's research programme has also begun with the commissioning of the first of seven research reports. The remaining reports will be commissioned by the Joint Research Committee, a joint body of representatives from the claimant community, claimant counsel, the Crown, Crown counsel, and Tribunal research staff.

Hearings for the next phase of the inquiry are likely to begin in 2024. ❐

From the Chairperson

In the last *Te Manutukutuku*, I wrote about the progress of the Tribunal's kaupapa inquiry programme, addressing claims concerning issues that affect Māori nationally. Over the past year, our inquiry into the kaupapa claims has continued to gain momentum.

In September, the Mana Wāhine inquiry concluded its tūāpapa hearings on the tikanga of mana wāhine and the pre-colonial understanding of wāhine in te ao Māori. The inquiry is now commencing a research programme to support the next phase of hearings.

The housing inquiry has completed its stage 1 hearings on homelessness and is on track to release its report by the end of the first quarter of 2023. Research for stage 2 is under way.

In October, the Te Rau o te Tika inquiry into claims concerning the justice system held the last of its Whakatika ki Runga phase of hearings, and it is proposed that the panel will issue its report on the issues heard in this stage of the inquiry in early 2023.

We also recently concluded the prioritised hearing of claims relating to Māori representation in resource management reforms in the freshwater inquiry. Our report on the Crown's proposed reforms was released on 2 September, and it is summarised in this issue on page 16 and is available in full on the Tribunal's website.

It is now time to commence the next kaupapa inquiry. A large number of claims have been lodged with the Tribunal since its inception concerning our constitutional arrangements. I note the recent passing of Her Majesty Queen Elizabeth II.

E te māreikura e te Kūini e moe i tō moengaroa. Hoki atu koe ki ōu mātua tīpuna e tātari ana mōu.

The constitutional claims have long been awaiting inquiry, have been on our kaupapa inquiry programme since 2014, and have been the next kaupapa inquiry due to commence since the start of the justice inquiry in 2021. It is appropriate that the inquiry into these questions begin preparation for hearing, and the inquiry into these claims will commence prior to Christmas.

Chief Judge Wilson Isaac
Chairperson
Waitangi Tribunal

From the Director

Tēnā tātou. It has been nearly 11 months since my last update and a lot has happened since taking up the role of pae matua/director of the Waitangi Tribunal Unit and the Māori Land Court.

The commitment of the Tribunal Unit team has continued to be evident as we have navigated the impacts of the COVID-19 environment. Some inquiries held hearing events online, others continued to hold in-person events within the protocols, while others adopted a hybrid model. For staff, this often involved working remotely and running hearings online from the office or from home, depending on the alert level or traffic light setting we found ourselves under.

Our report-writing and research teams also continue to progress their work programmes. With regard to report writing, there have been pre-publication releases of *The Mangatū Remedies Report* in September 2021, final recommendations for *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* in October 2021 (this was the addition of chapter 10 to the stage 1 report released in June 2019), *The Report on the Comprehensive and Progressive Agreement on Trans-Pacific Partnership* in November 2021, *The Priority Report on the Whakatōhea Settlement Process* in December 2021, *Haumaru: The COVID-19 Priority Report* in December 2021, *Motiti: Report on the Te Moutere o Motiti Inquiry* in March 2022, and *The Interim Report on Māori Appointments to Regional Planning Committees* in September 2022.

Looking ahead to 2023, we will continue to have a busy and diverse inquiry work programme as we manage the need to progress inquiries that were disrupted in the previous year, while also working through the preliminary stages of the recently initiated justice inquiry, Te Rau o te Tika. We will also have a focus on improving operations within the Tribunal Unit, having recently completed an internal scan to identify areas for improvement.

Steve Gunson
Pae Matua/Director
Waitangi Tribunal
Māori Land Court

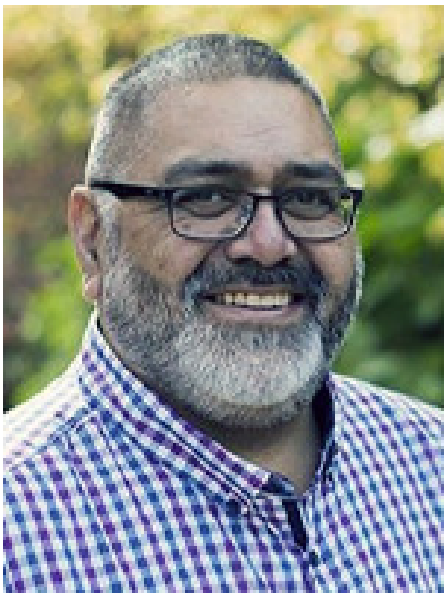
Member News

Herewini Te Koha

Since our last edition, one new member, Herewini Te Koha, has been appointed to the Tribunal. Mr Te Koha (Ngāti Porou, Ngā Puhi, Ngāti Tamaterā) is the director of Ngā Mātārae, which works across Auckland Council to strengthen relationships with Tāmaki Makaurau mana whenua and Māori communities.

Mr Te Koha has extensive public sector experience in Māori development and a legacy of strong iwi leadership. His previous roles include deputy secretary at Te Puni Kōkiri, chief executive at Te Māngai Pāho, and deputy director at the Office of Treaty Settlements. He is also the former chief executive of Te Rūnanganui o Ngāti Porou.

Mr Te Koha's governance involvement includes being co-chair of the governance group Manaaki Tairāwhiti, and he was one of three rūnanga-nominated appointees to Te Haeata, Ngāti Porou's Treaty of Waitangi claims negotiation team.



Herewini Te Koha

Judge Patrick Savage

Judge Patrick Savage

On 29 September 2021, Judge Patrick Savage, the deputy chairperson of the Waitangi Tribunal, retired from the bench.

Judge Savage was appointed as a Māori Land Court judge on 7 October 1994, and shortly thereafter he was appointed to his first role as a Tribunal presiding officer, heading the inquiry into Wai 449, the kiwifruit marketing claim.

Judge Savage went on to preside over a large number of Tribunal inquiries, including those concerning claims into the radio spectrum, dairy industry changes and their impact on Taranaki Māori, the Crown's policy on criminal reoffending rates, and the voting rights of Māori prisoners.

Over his 27 years on the Tribunal, one of Judge Savage's most significant contributions was as the presiding officer of the Te Urewera district inquiry. Judge Savage and the inquiry panel of Joanne Morris, Tuahine Northover, and Dr Ann Parsonson were appointed in 2001 and held hearings between 2003 and 2005, sitting at Maungapōhatu, Murupara, Tāneatua, Rangiāhua, Ruatāhuna, Ruātoki, Waikaremoana, Waimana, Waiōhau, and Te Whāiti. Their eight-volume 3,800-page report was released in stages between 2009 and 2015 and set out the history of the claims in Te Urewera, the evidence and submissions made to the panel, and the Tribunal's findings. In his letter delivering the final report to the Minister for Māori Development, Judge Savage wrote:

> The tears and the laughter at our hearings will remain in our minds forever. Even when anger was shown, we knew that it was never aimed at us as a tribunal, and there was never really a moment when our proceedings were disrupted.
>
> We thank the claimants who hosted us so magnificently during our hearings. Even in the most trying times, they treated us with dignity and generosity.

Judge Savage was appointed the deputy chairperson of the Tribunal in 2014, and he served in this role until his retirement. He fulfilled these duties alongside his responsibilities as a presiding officer and in addition to managing all applications for urgency and generally assisting the chairperson in the shaping and implementation of the Tribunal's inquiry programme. He also guided and mentored many of the Tribunal's staff in his roles as presiding officer and deputy chairperson, and his contributions to their work will be remembered warmly by them.

Judge Savage is a man who has always preferred straightforwardness over grandiosity or ceremony, so we will simply say that he is thanked by all his fellow judges, Tribunal members, and staff for his work and that we all wish him the best for his retirement. We hope that he thinks back fondly

on all that his work in the Tribunal has achieved with and for ngā iwi Māori, and the Treaty partnership as a whole.

E te manukura, Kaiwhakawā Savage, i tō tāokitanga i te paepae o te Kooti Whenua Māori me te Rōpū Whakamana i te Tiriti, tēnei te au o mihi, o aroha e rere nei. Kia hora te marino, kia whakapapa pounamu te moana, kia āio ai ngā rangi me ngā mahi kei mua i tō aroaro.

New judges

On 28 September 2021, the Minister for Māori Development, Willie Jackson, announced the appointment of three new judges to the Māori Land Court bench – Judges Mullins, Warren, and Williams – saying they would make valuable contributions to the bench.

A proud graduate of the University of Otago, **Judge Rachel Mullins** (Ngāti Kahungunu, Kāi Tahu) began her legal career at the Ngāi Tahu Māori Law Centre in Dunedin. Community law has always been close to her heart, and she is the independent Māori board member on the Community Law Centres of Aotearoa National Board.

Judge Mullins is a former Tumuaki Wahine of Te Hunga Rōia Māori o Aotearoa (the Māori Law Society) and has sat on the national executive in various roles for many years. Before she was appointed to the bench, Judge Mullins was the director of her own sole practice firm specialising in both Māori land law and education law, and she was one of the deputy chairs of the Teachers' Disciplinary Tribunal. Before that, Judge Mullins had worked at Hamilton law firm McCaw Lewis, managing the Māori land practice as well as acting for clients in Tribunal proceedings, Treaty settlement negotiations, and estate disputes.

Judge Aidan Warren (Rangitāne, Ngāti Kahungunu, Ngāi Tahu, Pākehā, Cherokee Nation) graduated with a master of laws from the University of Waikato in 2000 and was in private practice for nearly 22 years at McCaw Lewis. In 2008, he was appointed a partner and in 2011, when the firm incorporated, he was made a director. He was also the managing director from 2011 to 2021.

Judge Warren has acted for a number of Māori clients across the country on a wide range of issues affecting whānau, hapū, and iwi. He has specialised in Māori legal issues, including Treaty settlements, Tribunal proceedings, post-settlement governance advice for iwi groups, Māori land law, resource management, and general public law disputes, and has appeared before various courts.

Judge Warren is also an accredited and experienced mediator, having been involved in mediations in Aotearoa and in Samoa, both as a mediator and as a trainer, and he is a former Tumuaki Tāne of Te Hunga Rōia Māori o Aotearoa.

Judge Te Kani Williams (Tūhoe, Whakatōhea, Ngāi Tai ki Tōrere, Ngāti Manawa, Ngāti Maniapoto, Tainui, Te Aupōuri) graduated from the University of Auckland with a bachelor of laws and a bachelor of arts in Māori. He joined the law practice of CJ McGuire in 1994 and became an associate in 1997. That firm then amalgamated with DE Wackrow in 1997, becoming Wackrow & Co, and in 2002 Judge Williams became a partner in that firm (which in turn became known as Wackrow Williams & Davies Ltd).

A considerable component of Judge Williams's legal career has been spent focusing on Māori legal issues in the Māori Land Court, in the Waitangi Tribunal, and in settlement negotiations, where he has represented many hapū and iwi governance bodies.

Judge Williams is also a former Tumuaki Tāne of Te Hunga Rōia Māori o Aotearoa and is the current

Judge Rachel Mullins

Judge Aidan Warren

Judge Te Kani Williams

commissioner of Te Taha Māori ō te Haahi Weteriana ō Aotearoa.

As judges of the Māori Land Court, Judges Mullins, Warren, and Williams are all eligible for appointment as presiding officers of Tribunal inquiries, and they will take up inquiry appointments in due course.

Justice Harvey

On 15 October 2021, Attorney-General David Parker announced the appointment of Judge Layne Harvey to the High Court bench.

Justice Harvey was sworn in as a judge of the Māori Land Court on 17 October 2002 and has sat as a presiding officer in the Tribunal since 2004, when he was appointed to head the panel inquiring into Wai 1090, the Waimumu Trust (SILNA) claim. Since then, he has headed the inquiries into offender assessment policies and the management of the petroleum resource, and most recently he has presided over the Taihape district inquiry.

In his announcement of Justice Harvey's appointment to the High Court, Tribunal chairperson Chief Judge Wilson Isaac wrote:

> [Justice] Harvey is, as all who have worked with him will know, a Judge who is dedicated to the work of the Court and Tribunal, to the betterment of Māori land and Māori landowners, and above all else committed to ngā iwi Māori. This has informed his many written Court judgments where he has advanced the law in relation to Māori land, his guidance and rulings in Court and Tribunal sittings, and the work he has continued to undertake on trust boards and as a lecturer alongside his role in the Court and Tribunal. He has also been a mentor and supporter of many of our Judges and staff – at a Court sitting last Friday many of the attendees spoke of the high standards that he always set for himself, and for those around him, to meet the needs and aspirations of the parties appearing before him. I know that he will take the same commitment to the law and to kaupapa Māori to his new role on the High Court, and on behalf of the Māori Land Court bench, I congratulate him on his appointment.
>
> *E te uri o Ngāti Awa, Rongowhakaata, Te Aitanga a Māhaki, Ngāti Kahungunu ki Te Wairoa me Te Whānau a Apanui, e Judge Harvey tēnei te mihi ki a koe i tō ekenga ki te Kooti Teitei. Tēnei mātou e mihi, whakanuia ka tika!*

Justice Layne Harvey

Judge Sarah Reeves

Alongside his new High Court role, Justice Harvey continues as the presiding officer of the Taihape district inquiry panel, whose priority report into landlocked Māori land is nearing completion.

Judge Reeves

On 24 November 2021, Judge Sarah Reeves was appointed the Tribunal's deputy chairperson, following the retirement of Judge Patrick Savage.

Judge Reeves (Te Ātiawa) has been a judge of the Māori Land Court since 2010. In the Tribunal, she has has presided over inquiries concerning the MV *Rena*, the Ngāpuhi mandate, the Ngātiwai mandate, and the Ngāti Maniapoto mandate, and she is currently the presiding officer in the Mana Wāhine inquiry.

As the deputy chairperson, Judge Reeves is responsible for the management of applications for urgent inquiries, as well as working with Chief Judge Isaac to guide the Tribunal's inquiry programme and strategic direction. She is also currently engaged in a review of the Tribunal's *Guide to Practice and Procedure*.

Reappointments

On 28 February 2022, the Minister for Māori Development announced, along with Herewini Te Koha's appointment, the reappointment of 11 members for further three-year terms: Dr Robyn Anderson, Ron Crosby, Professor Rawinia Higgins, Dr Ruakere Hond, Kim Ngarimu, Associate Professor Tom Roa, Tania Simpson, Professor Linda Tuhiwai Smith, Dr Monty Soutar, Prudence Tamatekapua (Prue Kapua), and Professor Tā William Te Rangiua (Pou) Temara.

We take this opportunity to extend our congratulations to all the reappointed members and to thank them for their continued service to the Tribunal. ❐

Staff Profiles

Steve Gunson

Ko ōku waewae, i heke mai i ngā kāwai o Toa Rangatira, poua ki Hongoeka Marae.

Ko tōku wairua, he mea whakaora nā te Atua, nānā nei ngā mea katoa.

Ko tōku ngākau, ko tōku whānau me ōku piringa maha.

Tihei mauri ora!

Steve Gunson (Ngāti Toa, Te Āti Awa) was born, raised and continues to reside on the lands of his tūpuna, on Hongoeka Marae near Plimmerton. He feels blessed to have been able to grow up on his tūrangawaewae and participate in marae life and be surrounded by whānau. Like him, his 5 children (and now grandchildren) have also been raised in Hongoeka and have experienced this lifestyle of whānau and hapū living with its richness in whakapapa, tikanga, me te taiao. Steve enjoys waking to the sounds of Raukawakawa Moana and looking out to see Whitireia and Te moutere o te Mana o Kupe.

Steve is a soldier of the Salvation Army Church and currently worships at the Salvation Army Johnsonville. Steve has previously served as the Corps Sergeant Major of the Porirua Corps, has been a member of the former Māori Ministry Council, and currently serves on the leadership team at Johnsonville.

Pae Matua/Director Steve Gunson

Steve first started working at the Waitangi Tribunal Unit in April 2007 as the manager of the Claims and Registrarial Teams. From 2011 to 2014, Steve worked as the national operations manager at the Māori Land Court, from 2014 to 2016 as the national manager Tribunals Unit, from 2016 to 2017 as the transition manager for the Te Ture Whenua Māori project, and from 2017 to 2021 as the manager justice services Northern Wellington, a role established as part of the 2017 operational service delivery restructure. Steve views it as a privilege to have participated in projects and programmes across so many jurisdictions, all of which were designed to improve outcomes for the participants.

Steve returned in June 2021 as pae matua of Te Kooti Whenua Māori and Te Rōpū Whakamana i te Tiriti o Waitangi (director Māori Land Court and Waitangi Tribunal Unit). Steve is excited about leading the two teams and is looking to the future and the opportunities that exist to meaningfully improve outcomes for whānau, hapū, and iwi Māori.

Genevieve O'Brien

Genevieve O'Brien grew up south of Auckland before completing a bachelor of laws and a bachelor of social science (double majoring in statistics and psychology) at the University of Waikato. She worked in insurance while completing her legal professional studies, and then joined the Waitangi Tribunal Unit in March 2019 as a researcher/analyst in the report-writing team. Genevieve was appointed to the senior report-writer/analyst role in August 2021.

Senior Report-Writer/Analyst Genevieve O'Brien

Since joining the unit, Genevieve has been involved in several inquiries. Her main contributions have been to the Wai 2660 Marine and Coastal Area (Takutai Moana) Act 2011 inquiry, which released its stage 1 report in June 2020; the Wai 2915 Oranga Tamariki urgent inquiry, which released its report in April 2021; and the Wai 1750 North-Eastern Bay of Plenty district priority inquiry, which released a priority report in December 2021. Genevieve is currently working on stage 2 of the Wai 2660 inquiry, which recently completed hearings.

Genevieve feels privileged to have been involved in such a diverse range of inquiries, and is grateful for the opportunity to work for, and learn from, different presiding officers and panels. She enjoys leading staff work on large drafting projects and mentoring new staff.

Outside of the Tribunal, Genevieve is excited to be doing her masters in law. She intends to focus her programme of study on law in the public sector, constitutional issues, and indigenous rights. ❐

Acknowledging Former Staff

Here, we acknowledge and reflect on the significant contributions of two long-serving Waitangi Tribunal Unit staff members, Richard Moorsom and Cathy Marr, who recently departed the unit. We extend our grateful thanks and appreciation to Richard and Cathy for their combined decades of dedication and service to the work of the Tribunal.

Richard Moorsom

Richard Moorsom retired in December 2021 after more than 24 years' service. He started at the Tribunal Unit in 1997 as a researcher and facilitator for the Mōhaka ki Ahuriri inquiry, the first in the district inquiry programme.

Richard brought with him 25 years of experience in the United Kingdom and Europe in historical research and policy consultancy on southern Africa. He worked for the United Nations, the Commonwealth Secretariat, and various non-governmental organisations, and he helped to establish a policy research institute in Namibia following its independence in 1990. He also published extensively on Namibian history and economic development.

For the Mōhaka ki Ahuriri inquiry, Richard completed several commissioned research reports on raupatu and other land issues, and he contributed directly to Tribunal report writing, notably for the 2001 *Napier Hospital Report*. From 2001 to 2011, he served as deputy chief historian and then as manager research and report writing. He also served several stints as acting chief historian.

In 2011, Richard was appointed chief historian and Tribunal adviser. He was responsible for upholding quality standards, designing and assessing inquiry research programmes, reviewing draft Tribunal reports, and providing expert advice on many aspects of the Tribunal's work. He also assisted the Tribunal with the strategic planning of the annual work programme, as well as longer term work such as the Tribunal's strategic direction and the kaupapa inquiry programme. Richard was appointed to his final role as principal adviser Waitangi Tribunal in 2016 when the chief historian and adviser role was split into two.

Richard's complete commitment to the work of the Tribunal, his extensive knowledge, and his rigorous approach instilled a culture of excellence, and his many years of service provided continuity to the Tribunal and unit. For long into the Tribunal's future, we will remember Richard's achievements and reap the benefits of his contributions.

Cathy Marr

In January 2022, chief historian Cathy Marr resigned from the Tribunal Unit. A national expert in her field, Cathy has specialised in historical research for Tribunal inquiries over the last 30 years and is one of the Treaty sector's most experienced research historians.

In the early 1980s, Cathy began work in historical research at the Historical Branch of the Department of Internal Affairs. In the mid-1980s, she joined the staff at National Archives and became head of the Appraisal Section. In the late 1980s, Cathy left the public service to undertake contract work in historical research and archives advice, completing projects for a wide range of agencies, private businesses, and central and local government, and in 1989 she lead the creation and production of the Tribunal's *Raupatu Document Bank*, a crucial resource for claimants and Treaty sector researchers.

In the early 1990s, Cathy started at the Tribunal Unit as a senior research officer. She completed research on Taranaki, Ngāti Awa, and Tūwharetoa ki Kawerau claims. On the birth of her first son, Cathy returned to research contract work and over the next decade undertook multiple research commissions and contracts for the Tribunal, the Crown Forestry Rental Trust, and the Office of Treaty Settlements. The most notable among these were those for the King Country/Rohe Pōtae, Te Tau Ihu, Whanganui, Central North Island, Wairarapa ki Tararua, and Te Urewera district inquiries. She also authored reports on public works takings of Māori land and the Rohe Pōtae for the Tribunal's Rangahaua Whānui series.

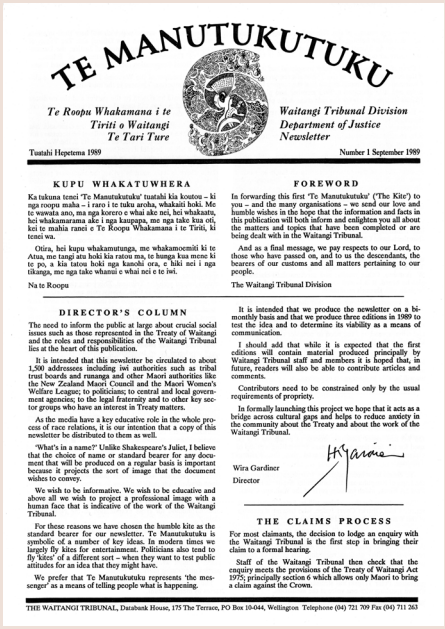
In 2008, Cathy rejoined the unit as a principal research analyst. She became chief historian in 2016 and provided reviews and recommendations on Tribunal report drafts as well as advice to panels and the Tribunal chairperson on technical matters. She also oversaw the development of the principal and senior technical leaders' groups within the unit to improve services to panels.

Cathy leaves behind a solid foundation for future staff to continue to build upon, particularly with the new demands of kaupapa inquiries. ❐

Tā Harawira 'Wira' Gardiner

When Tā Harawira 'Wira' Gardiner died in March of this year, most obituaries noted that he was the first director of the Waitangi Tribunal. While he was in the role for less than a year – serving from December 1988 until September 1989 – he left an indelible mark upon the institution.

As the nation approached the sesquicentennial of Te Tiriti o Waitangi in 1990, Wira sensed that the Tribunal could help guide Aotearoa/New Zealand to a bicultural future. In launching *Te Manutukutuku* in September 1989, he expressed the hope, in his first and only director's column, that the publication would act as 'a bridge across cultural gaps' and that it would help to 'reduce anxiety in the community about the Treaty and about the work of the Waitangi Tribunal'.



TE MANUTUKUTUKU

Te Roopu Whakamana i te Tiriti o Waitangi Te Tari Ture

Waitangi Tribunal Division Department of Justice Newsletter

Tuatahi Hepetema 1989 — Number 1 September 1989

KUPU WHAKATUWHERA

Ka tukuna tenei 'Te Manutukutuku' tuatahi kia koutou – ki nga roopu maha – i raro i te tuku aroha, whakaiti hoki. Me te wawata ano, ma nga korero e whai ake nei, hei whakaatu, hei whakamarama ake i nga kaupapa, me nga take kua oti, kei te mahia ranei e Te Roopu Whakamana i te Tiriti, ki tenei wa.

Otira, hei kupu whakamutunga, me whakamoemiti ki te Atua, me tangi atu hoki kia ratou ma, te hunga kua meno ki te po, a kia tatou hoki nga kanohi ora, e hiki nei i nga tikanga, me nga take whanui e whai nei e te iwi.

Na te Roopu

FOREWORD

In forwarding this first 'Te Manutukutuku' ('The Kite') to you – and the many organisations – we send our love and humble wishes in the hope that the information and facts in this publication will both inform and enlighten you all about the matters and topics that have been completed or are being dealt with in the Waitangi Tribunal.

And as a final message, we pay respects to our Lord, to those who have passed on, and to us the descendants, the bearers of our customs and all matters pertaining to our people.

The Waitangi Tribunal Division

DIRECTOR'S COLUMN

The need to inform the public at large about crucial social issues such as those represented in the Treaty of Waitangi and the roles and responsibilities of the Waitangi Tribunal lies at the heart of this publication.

It is intended that this newsletter be circulated to about 1,500 addressees including iwi authorities such as tribal trust boards and runanga and other Maori authorities like the New Zealand Maori Council and the Maori Women's Welfare League; to politicians; to central and local government agencies; to the legal fraternity and to other key sector groups who have an interest in Treaty matters.

As the media have a key educative role in the whole process of race relations, it is our intention that a copy of this newsletter be distributed to them as well.

'What's in a name?' Unlike Shakespeare's Juliet, I believe that the choice of name or standard bearer for any document that will be produced on a regular basis is important because it projects the sort of image that the document wishes to convey.

We wish to be informative. We wish to be educative and above all we wish to project a professional image with a human face that is indicative of the work of the Waitangi Tribunal.

For these reasons we have chosen the humble kite as the standard bearer for our newsletter. Te Manutukutuku is symbolic of a number of key ideas. In modern times we largely fly kites for entertainment. Politicians also tend to fly 'kites' of a different sort – when they want to test public attitudes for an idea that they might have.

We prefer that Te Manutukutuku represents 'the messenger' as a means of telling people what is happening.

It is intended that we produce the newsletter on a bi-monthly basis and that we produce three editions in 1989 to test the idea and to determine its viability as a means of communication.

I should add that while it is expected that the first editions will contain material produced principally by Waitangi Tribunal staff and members it is hoped that, in future, readers will also be able to contribute articles and comments.

Contributors need to be constrained only by the usual requirements of propriety.

In formally launching this project we hope that it acts as a bridge across cultural gaps and helps to reduce anxiety in the community about the Treaty and about the work of the Waitangi Tribunal.

Wira Gardiner
Director

THE CLAIMS PROCESS

For most claimants, the decision to lodge an enquiry with the Waitangi Tribunal is the first step in bringing their claim to a formal hearing.

Staff of the Waitangi Tribunal then check that the enquiry meets the provisions of the Treaty of Waitangi Act 1975, principally section 6 which allows only Maori to bring a claim against the Crown.

THE WAITANGI TRIBUNAL, Databank House, 175 The Terrace, PO Box 10-044, Wellington Telephone (04) 721 709 Fax (04) 711 263

The first issue of Te Manutukutuku

> We wish to be informative. We wish to be educative and above all we wish to project a professional image with a human face that is indicative of the work of the Waitangi Tribunal.

Thirty-three years later, as we put out this issue – our 79th – we trust that we continue to live up to Wira's original vision.

E te Rangatira, haere, haere, haere. ❐

Tā Harawira 'Wira' Gardiner

Oranga Tamariki

Mangatū Remedies Report

On 29 September 2021, the Tribunal released the pre-publication version of *The Mangatū Remedies Report*. In this report, the Tribunal made an interim recommendation under section 8HB of the Treaty of Waitangi Act 1975 that the Crown return to Māori ownership the Mangatū Crown forest licensed (CFL) land in the Tūranganui a Kiwa district and pay monetary compensation.

During 2018 and 2019, the Tribunal heard remedies applications seeking such a recommendation from several claimant groups: Te Aitanga a Māhaki and the Mangatū Incorporation, Ngā Uri o Tamanui, and Te Whānau a Kai. Another group, Te Rangiwhakataetaea–Wi Haronga–Ngāti Matepu, participated in the inquiry as an interested party. The Tribunal previously inquired into the claims of Te Aitanga a Māhaki, Ngā Uri o Tamanui, and Te Whānau a Kai in the Tūranga district inquiry, reporting on them in 2004 in *Turanga Tangata, Turanga Whenua: The Report on the Turanganui a Kiwa Claims*. In that report, the Tribunal made findings on a range of Crown Treaty breaches in the district, from the attack on the defensive pā at Waerenga a Hika in 1865 to the Crown's acquisition in 1961 of parts of the land now comprising the Mangatū CFL land. The Tribunal initially heard remedies applications from these claimants following the Supreme Court's 2011 decision in *Haronga v Waitangi Tribunal*. When the Tribunal first reported in 2013, it did not make a recommendation under section 8HB. The Tribunal's report was judicially reviewed and quashed in a 2015 High Court decision in *Haronga v Waitangi Tribunal*.

The reconvened Mangatū remedies inquiry is the first time the Tribunal has exercised its power to recommend the return of CFL land under section 8HB. In 1989, the Crown Forest Assets Act amended the Treaty of Waitangi Act to provide the Tribunal this additional recommendatory power. The 1989 Act gave effect to an agreement reached between Māori and the Crown, known as the 1989 Forests Agreement, which enabled the government of the day to pursue its preferred policy of corporatising State-owned forestry assets. Under the agreement, the Government could sell the cutting rights to Crown forest land under new forestry licences. In exchange, Māori received an additional protection for their well-founded claims relating to Crown forest land: they could seek an interim recommendation from the Tribunal that the land be returned to Māori ownership, and that recommendation would become binding on the Crown if an alternative agreement could not be negotiated within a 90-day period. Successful claimants would also receive additional financial compensation under schedule 1 to the Crown Forests Assets Act.

The Tribunal determined that Te Aitanga a Māhaki and the Mangatū Incorporation, Ngā Uri o Tamanui, and Te Whānau a Kai had well-founded claims that met a statutory prerequisite for binding recommendations under section 8HB(1) of the Treaty of Waitangi Act 1975 – that is, they related to the Mangatū Crown forest land. In its report, the Tribunal concluded that a number of the claims concerned the specific circumstances in which the land was lost from Māori ownership, as well as Crown actions that were designed to destroy the autonomy and control that Māori had over their lands in Tūranga. The Tribunal noted that Tūranga Māori successfully protected their political autonomy and control over their lands for 25 years after 22 leaders signed the Treaty in May 1840. However, beginning with the Crown's first military incursion in the district in 1865, the Crown had sought to overthrow Māori autonomy and to gain control of the land and resources in the district, including the claimants' Mangatū lands.

The Tribunal considered that the Te Aitanga Māhaki, Ngā Uri o Tamanui, and Te Whānau a Kai customary owners of the Mangatū CFL land suffered devastating losses of land and resources. Their losses included specific parts of the Mangatū CFL land, including practically the entire Mangatū 2 block (making up 4,073 acres of the Mangatū CFL land), which was acquired piecemeal by private purchasers during the 1880s and 1890s. They also lost a large area of the Mangatū 1 block, which the Crown acquired in 1961 for afforestation purposes in circumstances where it acted in bad faith and did not reveal to the owners its plans for a productive forest. As a remedy for the prejudice suffered by the claimants from these Treaty breaches, the Tribunal determined that the whole of the Mangatū CFL land should be returned to the Te Aitanga a Māhaki, Ngā Uri o Tamanui, and Te Whānau a Kai claimants. The Tribunal noted that the shareholders of the Mangatū Incorporation whakapapa to these groups and would also receive the benefits of this return.

During the 2012 and 2018 remedies hearings, the Tribunal heard evidence from forestry experts concerning the return of the Mangatū CFL land to Māori ownership. These experts raised practical issues with any such transfer. To address these practicalities, the Tribunal determined that the claimants would be required to establish appropriate governance entities prior to the issue of the Tribunal's recommendations. In order to meet this requirement, both claimant parties and the Crown participated in an iterative

The Mangatū Remedies panel during hearings in August 2018 in Gisborne (from bottom: Dr Ann Parsonson, Judge Stephanie Milroy, Associate Professor Tom Roa, and Tim Castle).

process whereby each claimant group ratified a separate governance entity to receive the benefit of the Tribunal's recommendations. The Tribunal also received extensive submissions on how the land should be returned to the claimants and how it should be managed and governed. After considering the benefits and challenges of the various options, the Tribunal concluded that the Mangatū CFL land should be returned undivided to a trust, to be established by the claimants, called the Mangatū Forest Collective Trust. The trust's beneficiaries would be the following proposed legally recognised governance entities: the Māhaki Forest Settlement Trust, the Ngā Uri o Tamanui Trust, and the Te Whānau a Kai Trust.

Having determined that the whole of the CFL land should be returned, and to whom, the Tribunal concluded that the claimants should receive the full financial compensation available under schedule 1 to the Crown Forests Assets Act. Schedule 1 compensation accounts for the fact that, after the Act came into effect, the Crown proceeded to sell cutting rights to its forestry assets. The value of the available compensation is calculated with reference to three different measures of the value of the forestry assets sold by the Crown: the market value of the trees; the market stumpage; and the net proceeds received by the Crown from the transfer of the forestry assets. To assist with this determination, the Tribunal heard extensive expert evidence concerning the economic value of the claimants' losses and the redress required to restore their economic base. The Tribunal concluded that the return of the Mangatū CFL land represented only a fraction of what had been lost by Te Aitanga a Māhaki, Ngā Uri o Tamanui, and Te Whānau a Kai, which included their autonomy and their social, cultural, spiritual, and economic well-being. The Tribunal also considered that the claimants would require significant resources to address the lasting socio-economic inequities that are the legacy of the many injustices their communities suffered.

Following the release of the report, the claimants and the Crown had a period of 90 days to negotiate a settlement of the claims. If an agreement was not reached, the Tribunal's interim recommendation would become binding on the Crown once those 90 days had passed.

In November 2021, the Attorney-General commenced High Court proceedings seeking to judicially review the Tribunal's report. The parties to those proceedings have agreed to interim orders staying the effect of the Tribunal's report pending the conclusion of the judicial review and any subsequent appeals. ❐

North-Eastern Bay of Plenty Report

On 13 December 2021, the Tribunal released *The Priority Report on the Whakatōhea Settlement Process* in pre-publication format. The inquiry panel comprised Judge Michael Doogan (presiding), Dr Robyn Anderson, Prue Kapua, Basil Morrison, Dr Grant Phillipson, and Associate Professor Tom Roa.

As acknowledged in previous Tribunal reports, the Whakatōhea iwi have significant Treaty grievances, including the Crown's waging of war against them and the raupatu (confiscation) of tribal whenua. In the wake of a failed attempt to settle their historical grievances with the Crown in the 1990s, the iwi have been divided over the path towards settlement.

In 2017, the Tribunal heard claims concerning the Crown's recognition of the Whakatōhea Pre-Settlement Claims Trust as the body holding the mandate to negotiate with the Crown on behalf of Whakatōhea. The Tribunal's subsequent report – *The Whakatōhea Mandate Inquiry Report* (2018) – recommended that Whakatōhea vote (again) on the best path towards settlement and that the vote record hapū affiliation in light of the historically hapū-driven nature of decision-making within Whakatōhea.

The results of the ensuing vote to determine how Whakatōhea should move forward were finely balanced and revealed significant support for both a Tribunal inquiry into the historical claims and the work of the Whakatōhea Pre-Settlement Claims Trust in its negotiations with the Crown. In light of the vote outcome, the Crown decided to resume its negotiations with the trust and also offered Whakatōhea a 'parallel process'. This process would allow Whakatōhea to continue their Tribunal inquiry while negotiating a settlement of their historical grievances with the Crown. However, the process would entail the settlement occuring well before the completion of the Tribunal's inquiry and the release of its report.

In 2020 and 2021, claimants brought further claims to the Tribunal for an urgent hearing regarding the Crown's decision. These claims challenged the Crown's continued recognition of the trust's mandate, its interpretation of the 2018 vote, its decision (following the vote) to resume negotiations with the trust, and its offer of a parallel process. The claimants also sought the completion of the Tribunal's district inquiry and report before settlement. As the Crown had indicated that the deed of settlement and subsequent ratification process could begin in November 2021, the Tribunal granted a priority hearing within the district inquiry to consider these matters.

Eight claims were received for the inquiry, and a further 35 parties were granted interested party status. Hearings were held in September 2021 at the Tribunal's offices in Wellington. Due to COVID-19 public health restrictions at the time, attendance was mostly via Zoom.

The first set of issues related to the implications of settlement legislation on the Tribunal's jurisdiction to inquire into historical claims and the Crown's proposal to restrict the Tribunal's recommendatory powers on historical matters. The second set of issues concerned the mechanism in the deed of settlement that would allow hapū to withdraw from settlement negotiations and the role of hapū in the ratification process for the deed of settlement.

In the priority report, the Tribunal's overarching finding was that the Crown's offer of a parallel process represented a rare opportunity for Whakatōhea to retain access to the Tribunal inquiry in parallel with (and subsequent to) the settlement negotiations.

The Tribunal also accepted that, on the whole, the Crown's decision to offer the parallel process to Whakatōhea was a fair and reasonable response to the finely balanced outcomes of the 2018 vote. However, the Crown's condition on the offer of a parallel process – that the Tribunal could not make any recommendations on historical claim issues – was not, in the Tribunal's view, a fair and reasonable response to those who had voted for a Tribunal inquiry to inform the settlement. Ultimately though, the Tribunal did not consider the Crown's response in breach of the Treaty, as Whakatōhea themselves would make the final decision on whether to accept the parallel process when ratifying the settlement proposal. The Tribunal considered that the Crown could reasonably allow for the Tribunal to make some hapū-specific or whānau-specific recommendations after settlement. These recommendations could address any grievances that may arise through the course of the district inquiry and that are limited or local in nature. As non-binding recommendations, these would pose little risk to the finality of the Whakatōhea settlement and, in the Tribunal's view, would ensure that the parallel process was sufficiently robust and meaningful to claimants and that the settlement reached was durable.

The Tribunal viewed its district inquiry into the historical grievances of Whakatōhea as separate and distinct from a Tribunal inquiry into the Treaty consistency of a settlement Bill. The Tribunal therefore concluded that it was not required – by either section 6(6) of the Treaty of Waitangi Act 1975 or by the principle of comity (which calls for the courts and the Crown to respect each other's jurisdictions) – to pause or stop its district inquiry while a

The Tribunal panel outside Ōpeke Marae. From left to right: Dr Grant Phillipson, Basil Morrison, Prue Kapua, Associate Professor Tom Roa, Dr Robyn Anderson, and Presiding Officer Judge Michael Doogan.

settlement Bill was before Parliament. The Tribunal noted, however, that it could not pronounce authoritatively on the proper scope of its own jurisdiction, and instead it set out its views to provide clarity to the parties on how it intended to proceed. The Tribunal concluded its commentary on this issue by noting that, if it were required to pause its distict inquiry while the settlement Bill is before the House, this may constitute a breach of Treaty principles, given the Crown's commitment to provide Whakatōhea with a parallel process.

In respect of the mechanism by which hapū can withdraw their mandate from the trust, the Tribunal found that certain aspects of the mechanism – including the withdrawal threshold and the withdrawal process – breached the Treaty principles of partnership and active protection. The Tribunal's proposed amendments included clarifying the threshold for members to trigger the withdrawal process and modifying that process to make it more hapū-driven. The Tribunal also recommended that the Crown defer the initialling of the deed of settlement until the withdrawal mechanism was amended and made Treaty-compliant and that the Crown amend the ratification strategy by including hui-ā-hapū at the hapū marae after the initialling of the deed of settlement (but prior to the ratification information hui and the hapū postal vote). Doing so would also facilitate hapū-driven decision-making on whether to accept the deed of settlement.

In respect of the Whakatōhea settlement process, the Tribunal concluded that the Crown's conduct had fallen short of Treaty compliance in certain regards. Nonetheless, it found that small yet crucial changes could remedy the prejudice to Whakatōhea and allow the Crown to settle their long outstanding Treaty grievances in a fair and honourable manner.

Following the release of the priority report, the district inquiry is now under way. The first Ngā Kōrero Tuku Iho hearing was held in June 2022 at Ōpeke Marae in Ōpōtiki. Hearings will continue throughout the year. ❐

Report on the CPTPP

On 19 November 2021, the Tribunal released its *Report on the Comprehensive and Progressive Agreement on Trans-Pacific Partnership* in pre-publication format. This was the third and final report in the Trans-Pacific Partnership Agreement inquiry (Wai 2522), which began in 2016.

Originally, the issues for this final stage of the inquiry included the Crown's engagement with Māori over both the Trans-Pacific Partnership Agreement and the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP), as well as the secrecy of those negotiations. However, in October 2020, the claimants and the Crown settled these issues through mediation, resulting in the withdrawal of the majority of the claims.

The remaining claims concerned data sovereignty, with the primary issue being what, if any, aspects of the e-commerce (electronic commerce) chapter of the CPTPP were inconsistent with the Crown's obligations under the Treaty.

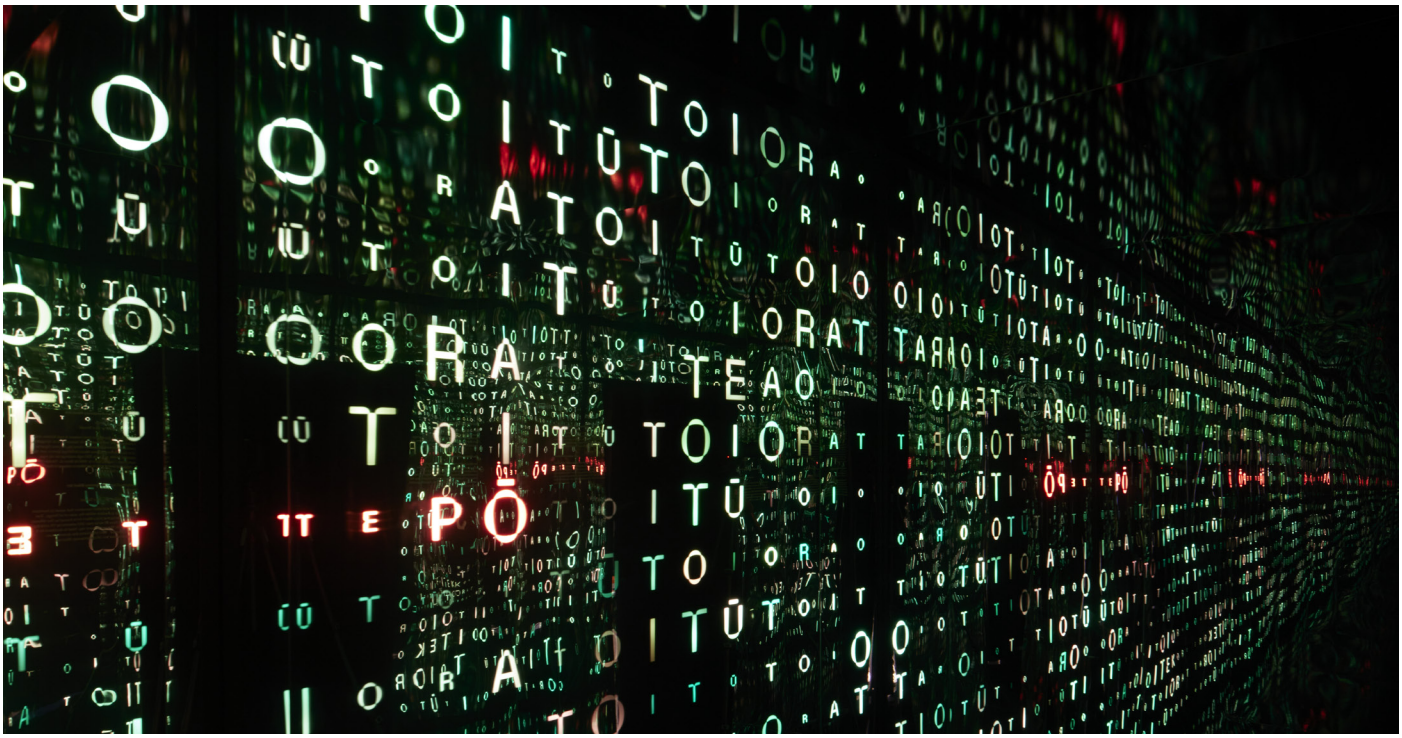
The hearing was held at the Tribunal's offices in Wellington from 17 to 19 November 2020, and the panel comprised Judge Michael Doogan (presiding), David Cochrane, Professor Susy Frankel, Tā Hirini Moko Mead, Kim Ngarimu, and Tania Simpson.

The Tribunal concluded that the risk to Māori interests arising from the e-commerce provisions in the CPTPP was significant and that reliance on exceptions and exclusions in the agreement to mitigate that risk fell short of the Crown's duty of active protection. As a result, the Tribunal found that the Crown had failed to meet its Treaty obligations and had breached the Treaty principles of partnership and active protection.

Despite having found that there was a breach, the Tribunal concluded that it would not be appropriate to make recommendations in this case. This was largely because, over the five years since the inquiry began, a significant shift in the Crown's position in response to claims had occurred and a number of processes to address concerns were under way or were in place. Additionally, the resolution of the issues relating to engagement and secrecy through mediation gave the Tribunal significant reason to pause and think carefully about what, if any, recommendations it could make to remove or mitigate any prejudice. Further, the recently announced agreement in principle between the United Kingdom and New Zealand, which will include a chapter on indigenous trade, indicated what was possible without freezing international negotiations entirely.

While the Tribunal acknowledged that there would be challenges ahead, it saw these matters as best left for negotiation and dialogue between the Treaty partners in good faith and within the fora and processes now in place. ❐

The cover image of the CPTPP report shows a detail of Toi Tū Toi Ora: Contemporary Māori Art exhibition identity



Extended Whānau.

COVID-19 Priority Report

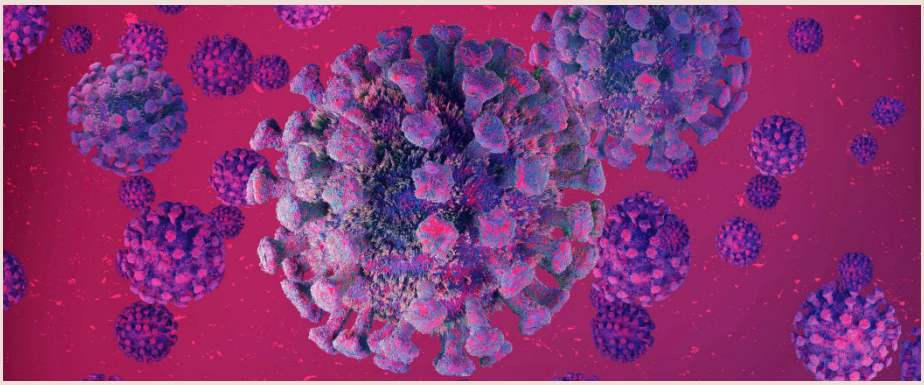
The spread of the COVID-19 (SARS-CoV-2) virus and its variants has caused global upheaval and presented unprecedented challenges for Aotearoa New Zealand, as well as having a disproportionate effect on the Māori population. It was widely expected that this issue of key national significance for Māori would be represented in claims brought to the Tribunal.

On 23 November 2021, the Tribunal received an application from claimants on behalf of the New Zealand Māori Council. They requested that an upcoming hearing within the health services and outcomes inquiry (Wai 2575) of claims concerning Māori with lived experience of disability be deferred in order to enable a priority inquiry into claims on the Crown's vaccine rollout and planned transition to the COVID-19 Protection Framework (known as the 'traffic light system'). The Tribunal agreed to grant this request. While rearranging the hearing at short notice was logistically demanding, the Tribunal and parties recognised the need for fast access to justice in the context of the unfolding pandemic.

A group comprising Archdeacon Harvey Ruru, George Ngatai, Ann Kendall, and Sir Edward Taihakurei Durie was granted claimant status on behalf of themselves and the New Zealand Māori Council (Wai 2644). Other groups participated in the inquiry as interested parties.

The priority inquiry focused on the following questions:

- Having regard to the disproportionate numbers of Māori vaccination rates and COVID-19 cases, was the Crown's vaccination strategy and plan consistent with Te Tiriti o Waitangi and its principles and was the Crown's November 2021 COVID-19 Protection Framework consistent with Te Tiriti o Waitangi and its principles?
- In the case that allegations of Treaty non-compliance were upheld, what changes were required to ensure that the Crown's vaccination strategy and November 2021 protection framework were Tiriti-compliant?



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A graphical representation of the SARS-CoV-2 virus

The hearing took place from 6 to 10 December 2021 at the Tribunal's offices in Wellington. Due to the then-current restrictions on the size of gatherings, witnesses and counsel participated via a hybrid of in-person and Zoom appearances. The Tribunal released *Haumaru: The COVID-19 Priority Report* in pre-publication format on 20 December 2021, less than two weeks after the hearing concluded. This would not have been possible without both the cooperation and timeliness of parties and the contribution of Tribunal Unit staff.

The Tribunal found that, while transitioning to the new protection framework was necessary, the Crown's decision not to adjust eligibility for vaccinations to reflect a younger age profile in the Māori population, and its failure to collect sufficient data to inform the vaccine rollout, breached the Treaty principles of active protection and equity.

The Tribunal also found that the Crown's decision to transition to the protection framework on 15 December 2021, without meeting the original district health board vaccination threshold, failed to account for the health needs of Māori, putting them at disproportionate risk, and breaching the Treaty principles of active protection and equity. This decision also put Māori health providers under severe pressure, undermining their ability to provide equitable care and thus breaching the principles of tino rangatiratanga and options.

A consistent theme of the Tribunal's findings was the failure of the Crown to consult or engage with Māori to the fullest extent practicable. This neglect was evident from the Crown's decision not to co-design a vaccination framework and breached the principles of tino rangatiratanga and partnership. The Tribunal found that the Crown's decision-making process on issues that would impact Māori was one-sided and inadequate.

The Tribunal further found that the breaches related to the Crown's vaccine rollout and traffic light alert level system prejudiced Māori by failing to provide adequate protection and by contributing to lower levels of vaccination.

To remove the prejudice suffered by Māori and to prevent others from being similarly affected in the future, the Tribunal's report outlined a range of recommendations. ❐

Motiti Report

On 22 March 2022, the Tribunal released *Motiti: Report on the Te Moutere o Motiti Inquiry* in pre-publication format.

The urgent inquiry report addresses a claim that the Crown breached the Treaty by failing to recognise the tangata whenua of Motiti Island as an independent tribal group warranting their own Treaty settlement. Instead, it was alleged, the Crown wrongly assumed that the tangata whenua of Motiti were covered by the Ngāti Awa settlement.

Hearings were held in Whakatāne and Tauranga from May 2018 to September 2019. The panel comprised Judge Miharo Armstrong (presiding), Dr Ann Parsonson, Tania Simpson, and Associate Professor Tom Roa.

The inquiry focused on a process that the Crown undertook in 2015 and 2016 to assess the claimants' assertion that Motiti's tangata whenua were distinct from Ngāti Awa and that their Treaty claims thus remained unsettled. Termed the 'kinship review', this process had the related aim of clarifying who the Crown should engage with in relation to Motiti by identifying which tribal group or groups had authority to speak for the island. Though the Crown reached no final conclusions in its review, it made preliminary findings that did not support the claimants' assertions. The claimants alleged that the review was flawed and that its findings were incorrect and that they perpetuated what they saw as the Crown's enduring failure to recognise their identity and distinct rights on Motiti.

The Tribunal granted urgency on the basis that the claimants, Ngā Hapū o te Moutere o Motiti, could suffer significant and irreversible prejudice if the Crown had misunderstood their tribal identity and status. Without Crown recognition, they could not participate in Treaty settlement negotiations or in any resulting settlement instruments affecting Motiti.

Tribunal members and staff with inquiry participants and tangata whenua during a site visit to Motiti Island, 18 May 2018. Seated are (from left) Associate Professor Tom Roa, Tania Simpson, and Dr Ann Parsonson; presiding officer Judge Miharo Armstrong stands to the right.

The central inquiry issue was therefore whether the Crown, through its kinship review, properly informed itself of the identity of the tangata whenua of Motiti. To address this issue, the Tribunal first had to consider the more fundamental question of who the tangata whenua were – a relatively uncommon exercise for the Tribunal – which it agreed to do at the claimants' and the Crown's express request. Another preliminary question to determine was whether the Ngāti Awa settlement covered Ngā Hapū o te Moutere o Motiti.

The Crown supported the inquiry, having been unable to reach firm conclusions on the crucial question of tribal identity in its kinship review.

The question of tribal identity and tangata whenua status on Motiti was highly contested among the claimants and the interested parties. The claimants argued that Ngāi Te Hapū (the descendants of Te Hapū) were the tangata whenua, while several interested parties argued that Te Patuwai were the tangata whenua and that Te Patuwai were part of Ngāti Awa.

On the preliminary questions for determination, the Tribunal found that:

- Te Patuwai are the tangata whenua of Motiti, Te Patuwai is a unified tribal identity that affiliates to Ngāti Awa, and Ngāi Te Hapū are an integral part of the Te Patuwai identity. Te Whānau a Tauwhao, a hapū of Ngāi Te Rangi, are also tangata whenua of Motiti.
- The Ngāti Awa Claims Settlement Act 2005 settled Motiti Island historical claims based on descent from the ancestor Te Hapū.

On the central inquiry issue, the Tribunal found that the Crown

properly assessed the identity of the island's tangata whenua through its kinship review. The Tribunal therefore made no finding of Treaty breach, but it considered that aspects of the review process were flawed (especially the way the Crown initially engaged with the claimants and other groups), and it offered suggestions on how that process could have been improved.

The Tribunal noted that, as the kinship review concerned claims about tribal identity and affiliation – matters of fundamental importance in te Ao Māori – it had implications not only for the claimants but for other individuals and groups. It thus thought that the Crown should have approached the review in a more culturally appropriate way: one that prioritised the need for discussion between the groups concerned. As it was, the Crown failed to fully engage with all groups at the outset, to invite all groups to participate in the process's initial design, and to support and engage in a tikanga-based process to resolve the questions under review, instead making an assessment of them itself.

Claimant Graeme Hoete (driving tractor) with other inquiry participants and tangata whenua during the Tribunal's site visit to Motiti Island, 18 May 2018

Despite the review process's flaws, the Tribunal found that the Crown acted appropriately overall and that it ultimately recognised the need to be more inclusive and to take corrective action, including meeting affected groups earlier than planned and supporting all groups to discuss the issues with each other. It also conducted the review in a largely open and transparent way.

In these and in other respects, the Tribunal found both that the Crown acted in good faith and that it ultimately met its duty of consultation to all groups. ❐

Interim Freshwater Report

On 2 September 2022, the Tribunal released *The Interim Report on Māori Appointments to Regional Planning Committees* in pre-publication format. The report is part of the ongoing national freshwater and geothermal resources claims inquiry (Wai 2358), and it addresses Māori representation on the regional planning committees that will be established under the future Natural and Built Environments Act and the Spatial Planning Act.

The focus of the Tribunal's inquiry was whether the approach proposed by the Crown was consistent with the principles of the Treaty. The Tribunal found that the Crown's proposal that iwi and hapū should lead and facilitate the process to decide on an appointing body was 'Treaty compliant at a high level of principle', although not all the detail had been decided at the time of the hearing. The Tribunal also found that the Crown's proposal for a legislative requirement that iwi and hapū engage with their members and with relevant rights and interests holders, and keep a record of that engagement, was Treaty compliant at a high level of principle. Again, the details had not been worked out at the time of the hearing. The Tribunal did not consider that the Crown should pause at this late stage and go back to full consultation with Māori about the details of the proposed appointments process.

Beyond these findings, the Tribunal was unable to say whether the Crown's proposed process was Treaty compliant overall. This was because the bespoke Resource Management Act 1991 arrangements negotiated through Treaty settlements and other processes still need to be transitioned into the new system. Those arrangements would potentially trump or even displace the proposed appointments process in some regions.

The panel hearing the freshwater inquiry comprises Chief Judge Wilson Isaac (presiding), Dr Robyn Anderson, Ron Crosby, Dr Grant Phillipson, and Professor Sir William Te Rangiua (Pou) Temara. ❐