

# 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 77



Waitangi Tribunal

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## In this Issue

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

### WAITANGI TRIBUNAL

*Tākiri te haeata, ka ao, ka awatea, horahia mai ko te ao mārama*



## THE STRATEGIC DIRECTION IN 2020

**I**N THIS ISSUE, we mark two significant milestones. The first is the release of the final part of *Te Mana Whatu Ahuru*, the Tribunal's report on its Te Rohe Pōtae district inquiry. The particular focus of part VI is to record the Tribunal's general and specific findings for each registered claim.

The Tribunal has also reached the halfway point in implementing its strategic direction 2014–25. In its just published update, featured in this issue, the

Tribunal reviews progress over the last six years, in particular towards completing the district inquiries and establishing the new kaupapa (thematic) inquiry programme. Looking ahead, it refines the strategic goals for the next few years.

This issue also pays tribute on his retirement to one of the Tribunal's longest-serving and most respected members, Professor Tā Hirini Moko Mead, and features the Oranga Tamariki urgent inquiry, which is currently in hearing. □

# From the Chairperson

SIX YEARS AGO, I launched the Waitangi Tribunal's *Strategic Direction 2014–2025*. This publication outlined a comprehensive and inclusive approach which aimed to address most of the claims on the Tribunal's registry that awaited a hearing. The challenge for the Tribunal was, and remains, to provide an independent, impartial, public, and accessible forum in which Māori Treaty claims can be heard and reported on in a timely manner. Our 2014 strategic direction envisaged new inquiry pathways to address this challenge and set a priority framework for achieving the five strategic goals that it laid down.

As we reach our halfway point, it is appropriate to take stock of our progress to date and to review our priorities and objectives. Much has been achieved since 2014. All the district inquiries then under way have been completed, are writing their reports, or are in their final hearings. Five kaupapa (thematic) inquiries have commenced

and progressed, as has a process for addressing remaining historical claims that have fallen outside the district inquiries. Alongside the regular inquiries, a number of urgent inquiries have been held, including binding remedies proceedings in three inquiry districts.

The Tribunal's expanded work programme is well under way. It has two central pillars. One is the final district inquiries, which will between them report on many hundreds of mainly historical claims. The release just before Christmas of the final part of the Tribunal's report on the Te Rohe Pōtae district inquiry, covered in this issue, is a landmark achievement in our progress towards completing the final district inquiries.

The other is the kaupapa inquiries, which focus on issues of national significance affecting Māori as a whole in similar ways. Their scope includes both historical and contemporary claims, while providing opportunity for claimants to seek priority for an

early hearing of pressing current issues. In inquiries under way, these have included primary healthcare services for Māori, the process for recognising customary rights to the foreshore and seabed, and Māori homelessness.

Completing these two inquiry programmes will enable the Tribunal to hear and report on the majority of claims and to fulfil the core objective as stated in 2014, which is to advance a Treaty-based Crown–Māori relationship and thereby sustain the political, social, and cultural fabric of Aotearoa/New Zealand. The Tribunal's publication *The Strategic Direction in 2020* updates our strategic goals and provides more information on the road ahead, as does an article in this issue.

Chief Judge Wilson Isaac  
Chairperson



# From the Director

KIA ORA TATOU. It is with great pleasure that I once again provide an update on the work of the Waitangi Tribunal Unit.

First of all, I hope you all had a relaxing break with whānau and friends.

A number of inquiries continue to progress through the hearing phase and report drafting is well under way across urgent, district, and remedies inquiries. I am delighted to report that, just before Christmas 2020, the takiwā volume, which forms part VI of the Wai 898 Te Rohe Pōtae report, was

released. This volume, along with the 24 thematic chapters already released by the Tribunal since September 2018, completes this report in pre-publication format. This is a significant achievement for the Tribunal and the staff that have supported this inquiry over the years.

As we look ahead to 2021, I hope we all have a far less disruptive year than we had in 2020. The Covid-19 lockdown and subsequent restrictions were challenging for all, and I was very proud of the way our staff rose to those

challenges. This year is likely to throw up challenges of a different kind as further inquiries are commenced, current inquiries progressed, and further reports released. I have no doubt that these challenges will be met by our committed staff.

Grace Smit  
Director



# Members, Ministers, and Honours

## New appointments

In July 2020, four members were reappointed to the Tribunal:

**Dr Ann Parsonson** has been a member of the Tribunal since 2001. She is currently serving on the panels for the Te Paparahi o te Raki district inquiry, the Mangatū remedies proceedings, and the Ngā Hapū o te Moutere o Motiti urgent inquiry.

**Dr Robyn Anderson** was first appointed to the Tribunal in 2004. She is currently serving on the panels for the Te Paparahi o te Raki and North-Eastern Bay of Plenty district inquiries and the recently started Mana Wāhine kaupapa inquiry. Dr Anderson also sits on the standing panel process for remaining historical claims in its first region, which covers the south-western North Island, the South Island, and the Chatham Islands.

**Professor Linda Tuhiwai Smith** (Ngāti Awa, Ngāti Porou) was appointed to the Tribunal in 2016. She is currently serving on the panels for two kaupapa inquiries: Health Services and Outcomes; and Mana Wāhine.

**Associate Professor Tom Roa** (Ngāti Maniapoto, Waikato Tainui)

was also appointed to the Tribunal in 2016. He is currently serving on the panels for the North-Eastern Bay of Plenty and Muriwhenua Land district inquiries, the Health Services and Outcomes kaupapa inquiry, the Mangatū remedies proceedings, and the Ngā Hapū o te Moutere o Motiti urgent inquiry.

## Ministers

Following the November election, the formation of the new government has resulted in some new appointments and some reappointments amongst the Treaty sector portfolios. These include:

- ▶ the **Hon Willie Jackson**, Minister for Māori Development;
- ▶ the **Hon Nanaia Mahuta**, Associate Minister for Māori Development;
- ▶ the **Hon Kelvin Davis**, Minister for Māori Crown Relations: Te Arawhiti;
- ▶ the **Hon Andrew Little**, Minister for Treaty of Waitangi Negotiations;
- ▶ the **Hon Kris Faafoi**, Minister of Justice; and
- ▶ the **Hon Aupito William Sio**, Minister for Courts.

## New Year Honours

We congratulate **Professor William Te Rangiua (Pou) Temara** on his appointment in the 2021 New Year honours as a Knight Companion of the New Zealand Order of Merit for services to Māori and education. He has been a Tribunal member since 2008, serving on numerous inquiries. Professor Temara was a founding director of Te Panekiretanga o te Reo Māori, the Institute of Excellence in the Māori Language, and is currently Professor in Te Reo and Tikanga at the University of Waikato. He is a nationally respected authority in te reo and tikanga Māori, kapa haka, and whaikōrero. □

*Professor William Te Rangiua (Pou) Temara*



# Judge Heta Hingston



**J**UDGE HETA HINGSTON QSO, who passed away in August 2020 at the age of 82, served as a judge of the Māori Land Court from 1984 to 1999. Among other things, he is remembered for making the initial decision in 1997 on Māori ownership of the foreshore and seabed, which ultimately led to the Court of Appeal decision in *Ngāti Apa* in 2003 and the Foreshore

and Seabed Act 2004. Judge Hingston presided in three Tribunal inquiries that reported their findings in the early 1990s: Ngāti Rangiteaorere (1990); the Māori Development Corporation (1993); and Te Maunga Railways Land (1994). He also served as a judge of the Cook Islands High Court and until 2010 as the chief justice of the High Court of Niue. □

# Tribute to Tā Hirini Moko Mead

WE acknowledge with deep appreciation and gratitude the contribution to the work of the Tribunal of Professor Sir Hirini Moko Mead KNZM, who in July 2020, after 17 years' service, retired from membership of the Tribunal, apart from two ongoing inquiries. Since his appointment in 2003, he has been a pillar of the Tribunal's inquiry programme, serving on numerous panels. They include two long-running district inquiries into claims from the west-central North Island that raised deep-seated historical grievances. One was National Park, whose *Te Kāhui Maunga* report was released in 2013. The other was Te Rohe Pōtae, which released the final part of its *Te Mana Whatu Ahuru* report on more than 270 claims in December 2020.

Tā Hirini was also appointed to a number of urgent inquiry panels. Their reports covered a wide range of contemporary issues, including allegations of systematic discrimination against Māori prisoners (2005), changes to the Māori Community Development Act and the Māori warden scheme (2014), and the reform of the Te Ture Whenua Māori Act relating to Māori-owned land and the powers of the Māori Land Court (2016). His last inquiry, into the Treaty consistency of the Trans-Pacific Partnership Agreement and its replacement, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, is expected to issue its final report in 2021.

Tā Hirini made many other significant contributions to the work of the Tribunal. He took an active role in Tribunal-led mediation aimed at assisting the Crown and claimants to settle their claims. From 2007 onwards, he was a member of the Tribunal's Governance Group. In all Tribunal inquiries and forums in which he was involved, his counsel



was greatly valued by Tribunal members, presiding officers, and staff alike. As kaumātua panel member, his wise leadership earned the respect of all participants in the many Tribunal hearings on which he sat.

Tā Hirini came to the Tribunal with a lifetime of notable achievements already to his name. After a childhood in Depression-ravaged New Zealand, he taught in schools across the East Coast and Bay of Plenty, and was headmaster of several. In the 1960s, he embarked on an academic career, studying in Auckland and the United States and lecturing at Canadian universities. In 1977, he returned from North America as Victoria University of Wellington's first Professor of Māori and head of New Zealand's first stand-alone Māori Studies Department. He was instrumental in founding Te

Herenga Waka Marae, the first to be sited on a mainstream university campus, and he co-curated the *Te Māori* exhibition of Māori art and cultural taonga, which toured the United States in the mid-1980s.

Tā Hirini is a leading authority on art, te reo, tikanga, and mātauranga Māori, having published a number of highly regarded works. Among Tā Hirini's contributions to scholarship, perhaps the most important is his well-known book *Tikanga Māori: Living by Māori Values*, first published in 2003. It explores fundamental concepts of Māori law and custom across all aspects of life, describing how those concepts adapted to changed circumstances in the nineteenth century and are still adapting today.

As an iwi leader, Tā Hirini helped to found Te Whare Wānanga o Awanuiārangi at Whakatāne, led the Ngāti Awa Trust Board's claim before the Waitangi Tribunal, and was chief negotiator of Ngāti Awa's Treaty settlement with the Crown in 2003. His contribution as a Māori leader, anthropologist, historian, artist, teacher, and writer was recognised in the 2006 Queen's Birthday Honours with his appointment as a Distinguished Companion of the New Zealand Order of Merit. His leadership and profound knowledge will be greatly missed by all who have worked with him at the Tribunal.

*E te tumu whakarae, te mumu Māori o Te Rōpū Whakamana i te Tiriti o Waitangi, kei whea mai te ataahua o te mahi, o te tuhi, o te whakaaro. Nō mātou te whiwhi, i whai wāhi mātou ki a koe, ki ōu pūmanawa, ki ōu painga, ki te hohonutanga o ōu mōhiotanga. Kua arahaina te ara ki mua i a tātou kia toitū te kupu, kia toitū te mana, kia toitū te whenua. Nō reira e taku amorangi, tēnei tō hāpai ō e whakamānawa ana i tō nui i tō rahi.*

*E kore rawa e tōmiti te puna mihi ki a koe.* □

# Staff Profiles

## Christopher Burke

Christopher Burke joined the Waitangi Tribunal Unit's Research and Inquiry Facilitation Team in June 2012, working primarily as a facilitator in urgent and remedies inquiries until 2015, when he moved to a senior policy role at the Ministry of Health.

Christopher returned to the unit as a senior facilitator in July 2017. Since then, he has provided senior advice and leadership across a number of inquiries. He is also one of the Tribunal Unit's two health and safety representatives.

Christopher was born in Huntly and spent much of his school years in the North Waikato, where his father worked as a foreman at the Huntly Power Station and his family had a small farm at nearby Naike. He graduated with a Bachelors of Laws and Arts from the University of Waikato in 2004 and went on to complete a Masters in History in 2007. He received a Top Achievers' Doctoral Scholarship to undertake PhD studies at the University of Otago in 2008. His PhD thesis, completed in 2012, was on pioneering New Zealand writer James Courage (1903–63).

*Principal Facilitator Christopher Burke*



In September 2020, Christopher was appointed to the role of principal facilitator in the Inquiry Facilitation Team. In this role, he is jointly responsible with his fellow principal for the team's technical leadership. The team liaises with inquiry parties and provides planning, procedural, and analytical support to presiding officers and Tribunal panel members during the preparation of their inquiries and the hearing of the claims that are before them.

Christopher says that he relishes the opportunity to draw from his own experiences to positively influence and guide new inquiry facilitators in their work supporting the Tribunal and parties, and to ensure that inquiries run as smoothly and efficiently as possible.

## Joanna Morgan

Joanna Morgan (Ngāti Tūwharetoa, Waikato, Ngāti Raukawa) first joined the Waitangi Tribunal Unit as a claims coordinator in November 2015. In this role, Joanna worked on a number of inquiries, primarily servicing the Taihape district inquiry and the Mangatū remedies application. In 2018, she stepped into the role of acting manager of the Claims and Registry Team, before leaving in 2019 to undertake a senior analyst role in the Treaty Settlement Team at the Ministry for the Environment. In early 2020, she worked on a programme at the Environmental Protection Authority to support decision-making committees to better understand mātauranga Māori, before returning to the unit in October 2020 to join the Inquiry Facilitation team as a principal.

Joanna was born and raised in Taupō, where her father works in forestry and her mother works at the high school near their home. Joanna says



*Principal Facilitator Joanna Morgan*

she enjoyed the comfort of living on the same block as her primary, intermediate, and secondary schools, and growing up with many family close by. Joanna and her siblings spent most weekends and holidays visiting family in Putaruru and Te Waotū in the South Waikato or at Whanganui Bay on the western shores of Taupō Moana.

In 2007, Joanna moved to Wellington to pursue studies at Victoria University, graduating in 2011 with a Bachelor of Arts in Māori Studies and a Diploma in Teaching and in 2012 with a Bachelor of Arts with Honours, focusing her dissertation on mana wāhine and a comparison of the role of Māori women pre- and post-colonial settlement. She is in the last year of a Bachelor of Laws degree, having initiated part-time studies in 2014.

Joanna says her upbringing, schooling, and previous work experience have guided her to pursue a career in kaupapa that value tikanga and te ao Māori and help all New Zealanders better understand te ao Māori. She says she is inspired by her colleagues' commitment to the work of the Waitangi Tribunal and values the opportunity to learn from the judiciary and its members. □

# The Strategic Direction Updated

## The situation in 2014

On 2 July 2014, Chief Judge Isaac, the chairperson of the Waitangi Tribunal, launched the Tribunal's long-term strategic plan, published as the *Strategic Direction 2014–2025*. In *The Strategic Direction in 2020*, just published, the Tribunal reviews its progress to date and updates its strategic goals.

Why did the Tribunal need a strategic plan? During the first 10 years following its foundation in 1975, the Tribunal considered contemporary claims one by one. In 1985, its jurisdiction was extended back to the signing of the Treaty of Waitangi on 6 February 1840. Historical claims began to flood in. In the mid-1990s, the Tribunal commenced its district inquiry programme to hear jointly all claims – historical and contemporary – that arose in each district. By 2014, the final district inquiries were under way.

Many claims nevertheless fell outside the scope of the district inquiries and their number was growing. They included claims registered too late to be heard in the inquiry for the district to which they related; claims from districts where iwi/hapū had settled with the Crown without a Tribunal inquiry; and non-district claims concerning issues of national scale. With a few exceptions, these claims had so far had no access to a Tribunal hearing, nor a prospect of one until some unspecified future time.

## Setting the direction

With completion of the district inquiry programme on the horizon, the Tribunal decided that a comprehensive and inclusive approach was needed that would provide access to all claimants who wished to have their

claims heard. Accordingly, the reach of its work programme was expanded to provide three new inquiry pathways:

- ▶ for claims that raised or related to nationally significant kaupapa (thematic) issues affecting Māori as a whole in similar ways, covering both historical and contemporary claims;
- ▶ for other historical claims that had not been settled, that had not been heard in the relevant district, and that the claimants still wanted to bring before the Tribunal; and
- ▶ for addressing the backlog of specific or local contemporary claims.

The strategic direction was envisaged as both transitional and transformative. Success would enable the Tribunal to address most claims awaiting a hearing, moving it towards hearing new contemporary claims as they were filed and thus providing more timely access to justice for Māori claimants. To achieve this objective, the Tribunal set five strategic goals, which it aimed to achieve by the mid-2020s:

- SG1** complete the final district inquiries and remaining historical claims by 2020;
- SG2** progress the high-priority kaupapa claims by 2020, including those likely to be included in historical Treaty settlements;
- SG3** substantially advance or complete the remaining kaupapa claims by 2025;
- SG4** address the remaining contemporary claims; and
- SG5** address claims granted urgency, in particular those arising from the Treaty settlement process.

## Progress to date

**Strategic goal 1 – district inquiries and remaining historical claims:** Our

expectation in 2014 was that all six district inquiries then under way would finish by 2020. Three have done so: Te Urewera in 2015, Whanganui Land in 2017, and Te Rohe Pōtae in 2020. The other three are still under way but are well advanced: Te Paparahi o te Raki (Northland) is preparing its report, while Taihape and Porirua ki Manawatū are in their final hearing rounds.

We did not, however, anticipate that two new district inquiries would start in 2019. One is the North-Eastern Bay of Plenty, where settlement negotiations in the 1990s had not concluded. The other is Muriwhenua Land, where applications for binding remedies have required further hearing of historical claims before returning to the remedy applications.

For the remaining historical claims, a standing panel process has begun and is at an early stage.

**Strategic goal 2 – high-priority kaupapa inquiries:** In April 2015, the chairperson inaugurated a kaupapa programme comprising 11 (today 13) major inquiries. The first, Māori Military Veterans, was by then already under way. It is about to enter its final round of hearings. Four more have since started. The Health Services and Outcomes (2016) and Marine and Coastal Area (Takutai Moana) Act inquiries have reported on contemporary issues, which had been prioritised for early action. The Mana Wāhine (Wai 2700) and Housing Policy and Services inquiries are being prepared for hearing. In addition, two inquiries that started under urgency – National Freshwater and Geothermal Resources and Trans-Pacific Partnership Agreement – have since become kaupapa inquiries in all but name.

The kaupapa inquiry programme has developed substance and momentum, not always in ways that we

expected. Notably, many claimants have wanted to prioritise their current pressing issues by having them heard either early in an existing inquiry or in a separate targeted inquiry rather than waiting for a broader, later inquiry. Further, many local groups and individuals have sought to bring their claims under the umbrella of the nationally significant issues set down for inquiry.

**Strategic goal 5 – urgent inquiries:** The Tribunal has released no fewer than 12 reports since July 2014 on claims granted urgency, and two more are currently under way. Half the inquiries concerned challenges to Crown processes for negotiating historical Treaty settlements. This was anticipated, but not the high volume. However, the number has declined sharply since 2017 alongside a growing focus on current social and economic issues of concern.

## Our experience so far

The Tribunal's experience so far suggests some key constraints and opportunities for future progress. The following four are amongst them:

- ▶ All the district inquiries except the North-Eastern Bay of Plenty are now aligned with the pace of the Crown's engagement with mandated groups in their districts.
- ▶ Many remaining historical claims have been included in Treaty settlements and ongoing negotiations with the Crown, reducing the number that are likely to require further Tribunal consideration by the standing panel.
- ▶ The participation of many existing and new claimants in kaupapa inquiries has sharpened a focus on contemporary issues and built up larger and longer inquiry processes, often organised into issue-based stages. It has also assisted more comprehensive investigation of the main issues set down for inquiry

and reduced the number of remaining contemporary claims requiring future Tribunal attention.

- ▶ Claimants in kaupapa inquiries have been saying that a lack of resources has restricted their ability to prepare their evidence and participate in the proceedings, limiting their access to justice. This constraint may slow progress in kaupapa inquiries.

## The road ahead

**District inquiries and historical claims:** Bringing closure to historical claims was first amongst the five strategic challenges outlined in the strategic direction. The Tribunal will add real value to the integrity and durability of historical Treaty settlements through the timely completion of the final district inquiries, in which most of the historical claims of iwi, hapū, and whanau are being heard. All the district inquiries except, possibly, the new North-Eastern Bay of Plenty district, are on track for completion by 2025.

**Kaupapa inquiries and contemporary claims:** It is already clear that most kaupapa inquiries are likely to be larger and longer than originally envisaged. The kaupapa programme has built-in flexibility to adjust but will nonetheless take longer to complete. Eight of the 13 listed kaupapa inquiries have not yet started. Progress up to 2025 will be limited by the substantial resources required to complete the district inquiries. Beyond 2025, the pace will pick up as kaupapa inquiries take centre stage.

**Remaining historical and contemporary claims:** The processes for considering the remaining historical and contemporary claims will be able to go ahead alongside the district and kaupapa inquiry programmes. Their scale is likely to be smaller than originally expected.

**Urgent inquiries:** The Tribunal will continue to provide a priority pathway

for claims that meet its high threshold for granting urgency.

## The update

In 2014, we expected that, by the end of the 12-year transitional period or soon after, the Waitangi Tribunal would be hearing contemporary claims as they were filed, including those granted urgency or assigned to new kaupapa inquiries. This remains the overall objective of the Tribunal's strategic direction but will begin to take effect earlier and be fulfilled over a longer period. It will be necessary to review progress and strategy in the lead-up to the end of the time period covered in the *Strategic Direction 2014–2025* so as to develop a new plan (if needed) by 2025.

The updated strategic goals are as follows:

- SG1** complete the final district inquiries by 2025;
- SG2** complete or advance at least half of the 13 major kaupapa inquiries by 2025;
- SG3** address the remaining historical claims;
- SG4** plan for addressing the remaining contemporary claims that fall outside the kaupapa inquiries; and
- SG5** address claims granted urgency, including urgent applications for remedies.

The Tribunal's general framework of priority settings has been adjusted to align with the updated strategic goals. In ranking order, they are:

- ▶ claims granted urgency, including applications for remedies granted urgency;
- ▶ claims participating in district inquiries;
- ▶ claims that relate to kaupapa issues;
- ▶ remaining historical claims not yet heard, settled, or included in Treaty settlement negotiations; and
- ▶ remaining contemporary claims not yet heard or settled. □

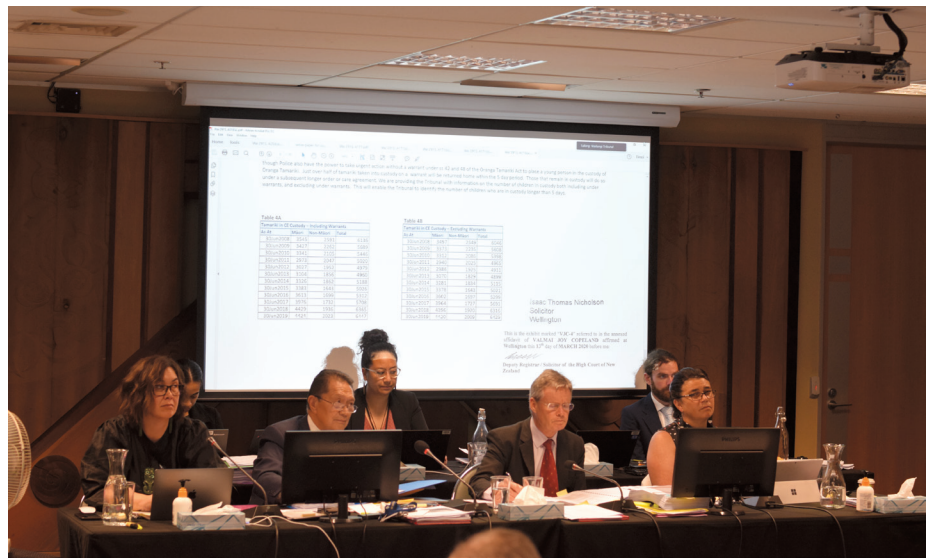
# Oranga Tamariki Urgent Inquiry

IN December 2020, the Waitangi Tribunal concluded the hearing of evidence from the claimants and the Crown in its Oranga Tamariki urgent inquiry. Amongst other functions, Oranga Tamariki/Ministry for Children is responsible for providing support to any child whose well-being is at significant risk of harm, including residential and care services for children who need care and protection and for young people who offend. The Tribunal panel comprises Judge Michael Doogan, Professor Pou Temara, Professor Rawinia Higgins, and Kim Ngarimu.

The claimants have challenged the Crown's legislation, policy, and practice in light of the disproportionately high and rising number of tamariki Māori being taken into State care in recent years. The inquiry is focusing on why such a significant and consistent disparity has arisen, to what extent recent legislative changes will improve it, and what additional changes might be required to secure Treaty-consistent outcomes.

Issues concerning the taking of children into State care and their treatment in State custody have been prominently in the public eye since the widely publicised uplift of a pēpi Māori in Hastings in May 2019. This triggered a range of high-profile public inquiries into Oranga Tamariki's policy and practice – including by the Children's Commissioner, the Whānau Ora Commissioning Agency, the Chief Ombudsman, and Oranga Tamariki's own Professional Practice Group. Abuse and neglect in State care is also the subject of the Royal Commission of Inquiry into Abuse in Care, but those issues do not form part of the Tribunal's urgent inquiry.

The Tribunal's inquiry is hearing allegations of Treaty breach by the Crown. It focuses specifically on the



*The Oranga Tamariki Tribunal hearing evidence from the Crown, November 2020. From the left: Professor Rawinia Higgins, Professor Pou Temara, Judge Michael Doogan, and Kim Ngarimu.*

disproportionately high number of Māori children in State care, which is not fully addressed in the other inquiries. Despite making up about a quarter of children in New Zealand, data submitted by the Crown indicate that between 2015 and 2019 tamariki Māori represented well over half of the children taken into State care in every age group. Early in the inquiry, the Crown acknowledged that this disparity was unacceptable – ‘While the causes of this inequity are complex, it has been accepted that a significant contributing factor has been the ongoing effect of historical injustices on iwi, hapū and whānau’ – and that Te Tiriti/the Treaty requires it to take all reasonable steps to address it.

Inquiry into issues concerning the State's care and protection of tamariki Māori brings the Waitangi Tribunal into new terrain. Of the more than 50 claims, many have come from Māori mothers who have experienced Oranga Tamariki's uplift powers in relation to their own tamariki, and much of the evidence before the inquiry touches on ongoing Family Court proceedings or orders.

In July and August 2020, the Tribunal heard evidence from a range of expert and Crown witnesses to help it understand why such significant disparities exist for tamariki Māori in the State care system. Among the witnesses were Dame Iritana Tāwhiwhirangi, Children's Commissioner Judge Andrew Becroft, and Helen Leahy of Te Pūtahitanga o te Waipounamu (the Whānau Ora commissioning agency for the South Island). The witnesses gave a range of views on the ways in which Oranga Tamariki executes its functions to care for and protect tamariki Māori. Their evidence also drew attention to what they considered to be instances of systemic dysfunction, including structural racism in the organisation and the alleged overuse of its powers to uplift children without giving prior notice to whānau.

The Crown witnesses, including Oranga Tamariki Chief Executive Gráinne Moss, emphasised the importance of the 2017 amendments to the Oranga Tamariki Act 1989, which came into force in July 2019. The most significant change was the introduction of section 7AA, which places duties on



the chief executive to recognise and commit to the principles of the Treaty, including through the development of strategic partnerships with iwi and Māori organisations.

After considering the expert and Crown evidence, on 19 August the Tribunal issued a memorandum outlining its preliminary views and its approach to the rest of the inquiry. Article 2 of Te Tiriti, the Tribunal stated, guaranteed Māori their tino rangatiratanga over their homes and villages, a promise by the Crown to respect the right of Māori to live on their lands and in their homes as Māori. The Crown also had a duty to protect the Māori interests guaranteed. It concluded that the factors now bringing disproportionate numbers of tamariki Māori to Oranga Tamariki's attention were largely attributable to the Crown's failure to honour its Treaty promises and to fulfil its duties. While accepting that there was a proper role for the use of the State's coercive powers to protect vulnerable children from harm, the Tribunal wanted to hear about ways in which many of Oranga Tamariki's powers, responsibilities, and resources might be devolved and delegated to Māori.

For the Tribunal, the questions that remained to be answered in the inquiry were:

What does the Crown's duty of active protection now require? How does the Crown redress the prejudice caused by its efforts to dismantle, rather than respect and protect the Māori way of life? How best can the Crown prevent further harm and prejudice to tamariki and their whānau, in the meantime?

The claimants in the inquiry presented their evidence from 19 to 30 October 2020 at hearings in Auckland and Hastings. The Tribunal sought to hear from the claimants about their direct experience of engagement with Oranga Tamariki and other agencies. Over two weeks, the Tribunal heard



*Paula Attrill, general manager, international casework and adoption, Oranga Tamariki, appearing at the hearing of Crown evidence in November 2020*

from Māori mothers and whānau, frontline social workers, former wards of the State, and representatives from iwi and Māori organisations – including Waihoroi Shortland, the chair of Te Rūnanga o Ngāti Hine, and Ngahiwi Tomoana, the chair of Ngāti Kahungunu Iwi Incorporated. Many of the witnesses gave their evidence in closed sessions due to its sensitivity or its connection to active Family Court proceedings. The Tribunal heard calls from the claimants that Oranga Tamariki be disestablished and either rebuilt as a Tiriti/Treaty-compliant agency, or some or all of the Crown's care and protection powers for tamariki Māori be transferred to 'by Māori, for Māori' organisations.

The Crown presented its evidence at hearings in November and December 2020. From the Crown, the Tribunal sought to hear about the resources and timelines that were required to make the vision represented by the new section 7AA a reality, as well as examples of sites or areas where Oranga Tamariki's activities were considered to be 'best practice'. Shortly before the hearings began, Crown counsel filed an opening statement which conceded that:

▶ the Crown had failed to fully

implement the recommendations of the 1988 *Pūao-te-ata-tū* report prepared by the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, a failure that had undermined Māori trust and confidence in the Crown;

- ▶ structural racism was a feature of the care and protection system and had meant more tamariki Māori being reported to it; and
- ▶ historically, Māori perspectives and solutions had been ignored across the care and protection system, and partnership and engagement with Māori was necessary to address this.

The Tribunal heard evidence led by the Crown from Oranga Tamariki officials, iwi, and Māori partner organisations about the changes currently being made by the Crown across the care and protection system and to Oranga Tamariki practice, so as to address these failings. These changes included strategic partnership agreements with seven iwi and the New Zealand Māori Council.

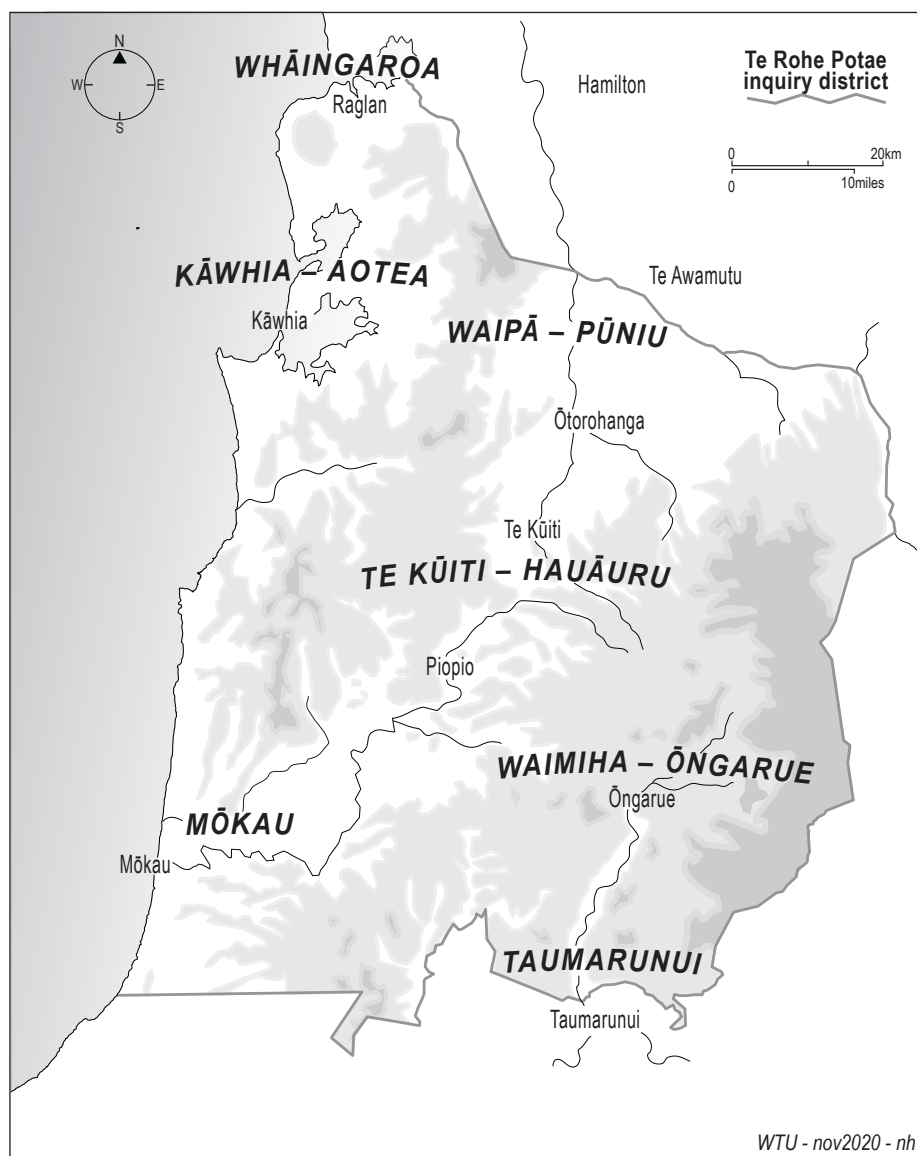
Counsel for the claimants and the Crown will make their closing submissions on the issues before the inquiry in early 2021, following which the Tribunal will prepare its report. □

# Te Rohe Pōtae Report Completed

**T**AKE A TAKIWĀ, the sixth and final part of *Te Mana Whatu Ahuru* – the Tribunal’s report on the Te Rohe Pōtae district inquiry – was released in pre-publication format shortly before Christmas 2020. It marks the conclusion of this large district inquiry, which began in 2006 and heard more than 270 iwi, hapū, whānau, block-specific, and district-wide claims.

Five parts of *Te Mana Whatu Ahuru*, comprising 24 thematic or kaupapa chapters, have been released in pre-publication format since 2018. The latest and final part differs significantly in scope and purpose. The function of the takiwā volume is threefold: to summarise every registered claim participating in the Te Rohe Pōtae district inquiry; to situate each claim within its local context; and to record the Tribunal’s findings on each claim. The Tribunal finds claims well-founded where legislation, policies, or Crown actions or omissions have been inconsistent with the Treaty and have prejudiced the claimants.

*Take a Takiwā* complements and augments the kaupapa chapters of *Te Mana Whatu Ahuru*, which have been progressively released in pre-publication format to aid settlement negotiations. Those chapters discuss major thematic issues agreed by the parties – overarching sources of grievance in the inquiry district, their long-term effects on Te Rohe Pōtae iwi and hapū, and the policy and legislative regimes that underpinned them. In planning the report, the Tribunal was determined that this issues-based framework would not render invisible the claims of whānau or smaller groups, especially those less well resourced. Nor did it want to see claims that were highly localised or distinctive to particular claimants subsumed into the analysis and findings on generic issues. To this end, the Tribunal tried to



*The seven takiwā of Te Rohe Pōtae*

address or reference as many specific claims as possible within the kaupapa chapters.

*Take a Takiwā* goes further, seeking to reflect the significance of the seven takiwā that make up Te Rohe Pōtae and to acknowledge the mana of every claimant and their claims.

The 278 registered claims are organised by takiwā, broad geographical sub-regions that the claimants identify, with a small number of claims that the Tribunal considers to be cross-regional grouped separately. The

takiwā, mostly located around the inquiry district’s major waterways, are: Waipā-Pūniu, Taumarunui, Kāwhia-Aotea, Whāingaroa, Te Kūiti-Hauāuru, Waimiha-Ōngarue, and Mōkau.

At the start of the Te Rohe Pōtae inquiry, Ngā Kōrero Tuku Iho hui (a series of traditional evidence hearings) took place at marae in six of these seven takiwā. There, kuia, kaumatua, and other knowledge-holders offered useful insights into what the takiwā meant to claimants. They emphasised that these areas did not necessarily

correspond with particular tribal groupings. Each takiwā could be valued by multiple groups and for various reasons; equally, any group could identify with more than one takiwā. Takiwā do not necessarily align with contemporary maps, GPS coordinates, or land blocks, and their boundaries might be understood somewhat differently by different groups. Nonetheless, takiwā are inextricably entwined with the claimants' identities, histories, and tikanga.

*Take a Takiwā* introduces each takiwā with a map and a short overview of the physical and human landscape. Although each overview is slightly different in emphasis, in general they highlight important maunga (mountains), awa (waterways), and other physical landmarks; sites of historical or spiritual significance; tribal groups and their connections to the area and one another; and how

tangata whenua have lived in, used, tended, fought over, and valued the takiwā over time. The text draws heavily on the rich evidence presented at the Ngā Kōrero Tuku Iho hui.

Within every takiwā section, each claim lodged by or on behalf of groups affiliated to that particular takiwā has its own entry. The essential details are recorded and the claim is summarised, taking account of the various ways it may have been developed, amended, or particularised as the inquiry progressed. These summaries are based largely on the statements of claim (original, amended, and final), rather than the legal arguments and positions put forward by counsel in submissions. Some claimants sharing hapū and whānau relationships chose to link their claims together in a larger group or 'cluster', often represented by the same counsel – in such cases, the summary reflects both the individual claim

and that lodged on behalf of the wider claim group.

Each claim entry also provides the Tribunal's assessment of the claim in respect of Treaty breach and prejudice suffered. This is set out in two steps. First is a list of the Tribunal's findings on general issues it considers apply to the claim. Secondly, the Tribunal addresses any specific claim issues or allegations not adequately covered by the general findings: it examines the evidence presented and, if appropriate, makes additional findings.

Comprising both a comprehensive inventory and an assessment of all the claims in this long-running district inquiry, *Take a Takiwā* is intended, the Tribunal states, to enable all the claimants to see something of themselves and their claims in it, how the Tribunal has addressed their particular concerns, and what findings it has made on their claims. □

## Inquiry Snapshots

### District inquiries

**Taihape:** In November 2020, the Tribunal heard the bulk of closing submissions at Winiata Marae for the 46 participating claims. This was Dr Paul Hamer's first hearing following his appointment to the Taihape panel in August 2020. The Tribunal will continue hearing claimant closings on Native Land Court issues and Crown closings on all issues in early 2021.

The Tribunal is planning to release an early report on landlocked Māori land following the release of its preliminary views in August 2018. The Tribunal is also considering claimant and Crown submissions on whether a preliminary Tribunal opinion is required on claimant customary interests in the Kāweka and Gwavas Crown forest licensed land in inland Hawke's

Bay, and on whether it should prioritise a report on the district's tribal landscape.

**North-Eastern Bay of Plenty:** In June 2020, the Tribunal confirmed the research required for the inquiry's casebook. This will consist of nine reports, to be prepared in two phases. Phase one, now under way, focuses mainly on the nineteenth century and includes an overview research report on raupatu (land confiscation), which was completed in July 2020. The Tribunal has also commissioned a report on nineteenth-century Māori land issues and a report on political engagement between the Crown and hapū and iwi in the inquiry district from 1871 to 2017. The Tribunal has indicated that the second phase of commissioned research reports may be refined as more detailed

information becomes available from the first reports. Hearings are programmed to begin in 2021.

**Porirua ki Manawatū:** Following the suspension of hearings during the Covid-19 lockdown, the Tribunal has resumed its hearing of the claims of Ngāti Raukawa and affiliated groups. In September, it heard evidence on district-wide historical land and environmental issues, alongside oral and traditional history. In a first for this inquiry, the hearing was held at the Museum of New Zealand Te Papa Tongarewa, and a multi-authored research report was presented remotely (across two days) from three different locations – Wellington, Christchurch, and Dunedin.

In November, the Tribunal focused primarily on tangata whenua evidence at a hearing held at Parewahawaha

Marae, near Bulls. The Tribunal heard from Ngāti Parewahawaha and Ngāti Manomano claimant groups. In December, the Tribunal heard from Ngāti Waewae, Ngāti Pikiahu, Ngāti Matakore, and Ngāti Rangatahi claimant groups at Te Tikanga Marae, Halcombe. Six more hearings in this phase of the inquiry are scheduled in 2021 between April and December.

## Kaupapa inquiries

**The Trans-Pacific Partnership Agreement:** The Tribunal has completed its stage 2 hearing of claims arising from the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Back in May 2020, the Tribunal reported on the Crown's process for reviewing the plant variety rights regime, one of four issues heard in stage 2. The report was prioritised to provide the Crown with the Tribunal's findings ahead of its introduction of legislation on this matter.

In July, the claimants and Crown jointly requested Tribunal-led mediation, an alternative pathway for the resolution of claims available under schedule 2 to the Treaty of Waitangi Act 1975. Led by Judge Damian Stone and Prue Kapua, in October 2020 the mediation succeeded in settling two of the three remaining issues for inquiry – Crown engagement with Māori and Crown secrecy in negotiating the agreement. In November, the Tribunal convened its final hearing in Wellington, focusing on the single remaining issue, data sovereignty, with all written closing submissions following in December 2020.

**The Marine and Coastal Area (Takutai Moana) Act:** Following the release in June 2020 of the Tribunal's report on the Crown's processes for customary rights recognition in the coastal and marine area, hearings have commenced in stage 2, which focuses on the Treaty compliance of the Crown's legislation, policies,



*The New Zealand Red Ensign of Ngāti Parewahawaha flies beside the Union Jack of Ngāti Huia at Parewahawaha Marae, along with the flags of Ngāti Parewahawaha and Ngāti Manomano, representing their significant relationships as hapū of Ngāti Raukawa ki te Tonga*

and practices. Hearings of claimant evidence were held in Northland in September and November. A further claimant hearing will be held in the Bay of Plenty in March 2021, with Crown evidence to be heard in Wellington in May 2021.

**Health Services and Outcomes:** In October 2020, Judge Damian Stone was appointed as replacement presiding officer following Judge Clark's resignation and appointment as a judge of the District Court. This is Judge Stone's first appointment to a Waitangi Tribunal inquiry.

In its 2019 report on the legislative framework and funding process for primary healthcare, the Tribunal asked the claimants and the Crown to discuss its interim recommendations concerning historical underfunding and the prospect of creating an independent Māori health authority. This work continues. Meanwhile, the Tribunal has been preparing to hear claims concerning Māori with disabilities, which

are planned to start in 2021. They will be followed by hearings of the other two issues affecting Māori to which the Tribunal has given priority: mental health; and alcohol, tobacco, and substance abuse.

**Housing Policy and Services:** In September 2020, the Tribunal confirmed that it will expedite the hearing of claims concerning Māori homelessness. This followed an extensive period of consultation with the claimants and Crown on how the inquiry as a whole should proceed, including on whether any issues should be given priority. This first round of hearings, starting in March 2021, will focus on Crown policies, legislation, and actions from 2009 onwards and the related responses from Māori. Meanwhile, the Tribunal has continued its preparation of the wider inquiry, in particular on the research likely to be required.

**Mana Wāhine:** The Tribunal has confirmed the scope of its inquiry into claims concerning Māori women, which will examine mana wāhine (the mana of Māori women), allegations of systemic discrimination against Māori women, and the Treaty compliance of the Crown's conduct. The inquiry will begin with an exploration of the tikanga (law and custom) of wāhine Māori. This will involve, among other things, examining the pre-colonial understanding of women in Māori society. This is intended to provide a tūāpapa, or context, for the rest of the inquiry, which the claimants have asked to take both a chronological and thematic approach so as to connect the issues and show the impact over time. The inquiry will be framed by four themes: the exclusion of Māori women from decision-making; the way that Māori women have been treated in terms of lands; the intergenerational well-being of Māori women and their whānau; and the way Māori women have been treated in relation to economic matters. Contextual hearings will be held over the course of 2021, starting in February. □