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 67

Waitangi Tribunal

Kei Roto | Inside

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Strategic Direction Launched

Tribunal Chairperson, Chief Judge Wilson Isaac, holding Strategic Direction 2014-2025.

This issue of *Te Manutukutuku* features two major developments in the Waitangi Tribunal's inquiry programme over the last six months, a new long-term strategic direction for the Tribunal and its first report on the Te Paparahi o Te Raki (Northland) regional inquiry.

On Wednesday 2 July 2014, Chief Judge Wilson Isaac, Chairperson of the Waitangi Tribunal, hosted a public function in Wellington at which he launched the *Strategic Direction 2014-2025*.

Speaking to iwi leaders, lawyers, the media and members of the public, Chief Judge Isaac described the document as 'hugely important and significant for plotting our strategic direction over the next 12 years'.

Its principal purpose, he said, 'is to shift our focus from an organisation which has over the past two decades concentrated on district inquiries to an organisation which will focus on contemporary and kaupapa [thematic] inquiries. The *Strategic Direction* covers the period of that fundamental transition and sets out what we need to do to make it happen.'

Four months later, on Friday 14 November 2014, the Tribunal handed over its report on Stage 1 of the Te Paparahi o Te Raki inquiry in a ceremony at Te Tii Marae, Waitangi attended by several hundred members of the claimant community.

The central focus of the report is on Crown and Te Raki Māori understandings of the meaning and effect of He Whakaputanga o Te Rangatiratanga o Nu Tireni/the Declaration of Independence and Te Tiriti o Waitangi/the Treaty of Waitangi, first signed at Waitangi on 28 October 1835 and 6 February 1840 respectively. The Tribunal's conclusions on these two key documents – notably that the agreement made at Waitangi did not amount to a cession of sovereignty by Ngāpuhi – are relevant for all those interested in the fulfilment of the Treaty's promises and its place in the nation's constitutional development.

In this issue we also cover the appointment and reappointment of seven Tribunal members, the release of four recent Tribunal reports and the start of the inquiry into military veterans' claims, the first in the Tribunal's new kaupapa (thematic) inquiry programme. ❐

From the Chairperson

Tākiri te haeata, ka ao, ka awatea, horahia mai ko te ao mārama
Dawn breaks, comes the daylight and the world is aglow with brilliant light

These words of tā Hirini Mead's whakataukī for the Waitangi Tribunal's new *Strategic Direction 2014-2025* aptly express its two key purposes of setting out the Tribunal's long-term aims and how they will be achieved.

The launch of the *Strategic Direction* marks a significant moment in the history of the Waitangi Tribunal. By 2025, our overarching aim is to ensure that the great majority of claims that seek Tribunal consideration have been addressed.

We have already come a long way. Over the last two decades our district inquiry programme has enabled many iwi/hapū groups from across the nation to bring their claims before the Tribunal. The district inquiries have heard and reported on some of the most serious allegations of Treaty breach, such as raupatu and large-scale land alienation. We have also completed some 75 reports, often under urgency, into claims raising contemporary issues.

However, there is still much to be done. First and foremost, we will complete the remaining district inquiries by 2020. Participating in them are nearly half of the more than 1800 claims that have not yet been fully inquired into.

In addition, there are several hundred claims with historical grievances that have fallen outside the district inquiries. Some of these raise kaupapa (thematic) issues of national significance, others have a local focus. Beyond 2020, we will address the remaining kaupapa issues and other contemporary claims.

In the last six months we have released the Te Paparahi o Te Raki Stage 1 Report on the meaning and effect of the Treaty. We have also released Part 5 of the Te Urewera Report, the final Rena Report and the NZ Māori Council Report.

As part of our transition from district to kaupapa inquiries we have commenced an inquiry into military veterans' claims. We are now adopting a comprehensive approach so as to address all current and future claims and provide inquiry pathways that help claimants to fulfil their aspirations.

As we work towards our long-term objectives, we will continue to hold fast to the wisdom that the Hon. Matiu Rata articulated for the Waitangi Tribunal when its founding legislation was passed in 1975 - to be a vital instrument for honouring the Treaty of Waitangi.

Chief Judge Wilson Isaac
Chairperson

From the Acting Director

As Acting Director of the Waitangi Tribunal Unit, which services the Waitangi Tribunal, it is great to be able to share with our readers the *Waitangi Tribunal Strategic Direction 2014-2025*. Launched in July 2014 by the Chairperson of the Tribunal, it provides a clear framework and platform upon which the administration will develop and implement a range of initiatives and processes to support the Waitangi Tribunal to achieve its strategic goals through to 2025, working proactively with the Chairperson, presiding officers, and members of the Tribunal.

We have commenced work on the implementation plan to align the Unit's operating model and capability to the Tribunal's strategic goals. In this issue we provide an outline of the work programme for the first year.

The Unit is also committed to achieving the Ministry of Justice's business strategy to improve customer service and service delivery by reducing the time it takes to deliver services. In the case of the Tribunal, that means the timely completion of registering, researching, hearing, and reporting on claims. Improved efficiency and new ways of working will feature in our implementation planning for the strategic direction.

We are excited about the new pathway and direction that this provides both for the Tribunal and the Unit and it is one that we are ready to embrace. Kia ora rā.

Julie Tangaere
Acting Director

New Tribunal Members

One returning and three new members have been appointed and seven current members reappointed, all for terms of 12 months from August 2014.

Tureiti Moxon

Tureiti Moxon (Ngāti Pahauwera, Ngāti Kahungunu and Kāi Tahu) has a legal background and is a Chartered Fellow of the Institute of Directors. She has played a major role over many years in community development, especially in the education and health fields. She was closely involved with the early Kōhanga Reo movement and helped to establish many kōhanga reo across the Waikato, Maniapoto and Hauraki regions.

Ms Moxon was a founding member and CEO of Toiora Primary Health Organisation Coalition and the Deputy Chair of the Kirikiriroa Family Services Trust. She is currently managing director of non-profit Te Kohao Health, which focuses on community health, social, education, and justice services in Hamilton and the Waikato region. Ms Moxon was instrumental in the establishment of a Community Health and Wellness Centre and in the growth of the Toiora PHO. She also has extensive experience in working with urban authorities and iwi.

Ms Moxon has extensive governance experience with local and national organisations, including the Early Learning Management Taskforce, the Social Security Appeal Authority, the National Urban Māori Authority, Te Rūnanga o Kirikiriroa, Waikato DHB Iwi Māori Council and Ngāti Pahauwera Development Trust. She has also served on Trust Waikato, Habitat for Humanity and Philanthropy New Zealand.

Erima Henare

Erima Henare (Ngāpuhi, Ngāti Wai, Ngāti Kuri, Ngāti Kahu, Ngāi Takoto, Te Aupōuri, Te Rarawa and Ngāti Whātua) is an acknowledged authority on the ancient and modern history, whakapapa, reo and tikanga of Te Tai Tokerau. He has a long record of iwi and public leadership. Among other public, advisory and educational sector posts, Mr Henare is the chair of Te Taura Whiri i Te Reo Māori/the Māori Language Commission, an adviser to the Open Polytechnic of New Zealand, and a board member of the Waitangi National Trust and of Heritage New Zealand Pouhere Taonga and its Māori Heritage Council. He is an adviser to King Tuheitia Paki.

Mr Henare has had a long association with the public service, having occupied senior roles in the Department of Māori Affairs, the Iwi Transition Agency, and the Ministry of Foreign Affairs. Having returned home to the North at the request of his people, he has served as general manager of the Ngāti Hine Health Trust and chair of the Tai Tokerau Primary Health Organisation. Mr Henare has also been a member of the Northland DHB and the Council of Northtec, and he sits on many other regional and national boards and committees.

David Cochrane

David Cochrane is a special counsel at national law firm Simpson Grierson, specialising in public and commercial law. He has more than 35 years' experience as a lawyer in central government and private practice. His experience extends to law drafting here and overseas, including legislation implementing the Māori fisheries settlement and for Fiji, Vanuatu, Kiribati and Samoa.

Mr Cochrane had extensive involvement in the Marine and Coastal Area (Takutai Moana) Act 2011 and the Heritage New Zealand Pouhere Taonga Act 2014 both before and during their passage through Parliament. He has presented submissions to and advised Select Committees and Government, conducted reviews, and provided governance and legal advice, with specific interests in transport, fisheries, primary industries, local government corporate activities, superannuation and other trusts, and retirement villages.

Mr Cochrane is a member of the Legislation Advisory Committee, the Commonwealth Association of Legislative Counsel, and the New Zealand Law Society's Law Reform Committee.

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Angela Ballara

Dr Angela Ballara has been reappointed as a member of the Tribunal after a short time away. Dr Ballara is recognised as one of the foremost academic authorities on Māori customary history. In a career spanning more than 30 years, Dr Ballara has written three books and two theses and has contributed to numerous published works. She has written papers for the Journal of the Polynesian Society and the New Zealand Journal of History and was a member of the team responsible for producing the Dictionary of New Zealand Biography and Ngā Tāngata Taumata Rau, a compilation of nearly 500 biographies profiling significant figures in Māoridom. Dr Ballara had particular responsibility for the Māori side of this project.

Dr Ballara's published books include *Taua: 'Musket Wars', 'Land Wars' or Tikanga? – Warfare in Māori Society in the Early Nineteenth Century* (2003); *Iwi: The Dynamics of Māori Tribal Organisation, c1769–c1945* (1998); and *Proud to be White? A Study of Racial Prejudice in New Zealand* (1986).

Dr Ballara's academic qualifications include a PhD in history from Victoria University of Wellington (1992), an MA in history from Auckland University (1973), a Certificate of Proficiency in Māori Studies from Auckland University (1981), and a BA in history from Auckland University (1969).

Nau mai haere mai to our one returning and three new members. We also congratulate the following seven members on their reappointment to the Tribunal: Dr Monty Soutar (Ngāti Porou, Ngāti Awa), Kihi Ngatai QSM (Ngāi Te Rangi, Ngāti Ranginui), Tania Simpson (Ngāti Manu, Ngāti Maniapoto), Professor Pou Temara (Ngāi Tūhoe), Dr Aroha Harris (Te Rarawa, Ngāpuhi), Basil Morrison and Ronald Crosby. We also congratulate Dr Grant Phillipson on his earlier reappointment for a term of three years.

In acknowledging the four departing Tribunal members – Kaa Williams, Nick Davidson, Professor Richard Hill and Tim Castle – the Chairperson thanked them for their contributions to the work of the Tribunal. The Tribunal will continue to benefit from the expertise of Mr Castle on the inquiry panels to which he is presently appointed.

Judge Michael Doogan

Congratulations to Judge Michael Doogan on his permanent appointment to the Māori Land Court bench. Judge Doogan was appointed as a temporary judge in January 2013. His warrant enables him to preside over Waitangi Tribunal inquiries and his first, the Te Aroha Maunga Settlement Process (Wai 663) urgent inquiry, released its report in June 2014.

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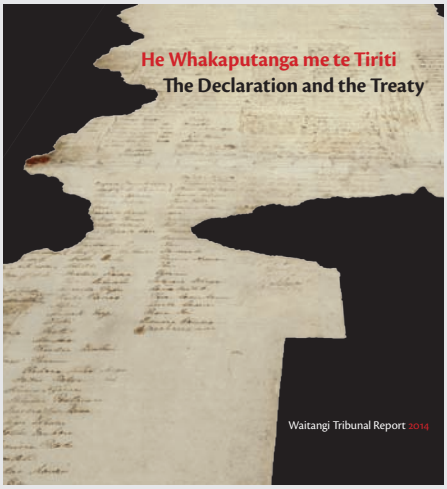
Te Paparahi o Te Raki Stage I Report



The release on 14 November 2014 of the report on Stage 1 of the Tribunal's inquiry into claims in Te Paparahi o Te Raki (the great land of the north) was a significant occasion (see cover story). The report, titled *He Whakaputanga me te Tiriti: The Declaration and the Treaty*, covers new ground for the Waitangi Tribunal and provides its most thorough examination yet of the creation and signing in the north of he Whakaputanga (1835) and te Tiriti o Waitangi (1840), the Māori-language versions of the Declaration of Independence and the Treaty of Waitangi.

> The Tribunal's report refers to the Māori and English versions, as well as each of the 1835 and 1840 events as a whole, collectively as 'the declaration' and 'the treaty' (in lower case) respectively

The purpose of Stage 1 was to establish the meaning and effect of the treaty for the Crown and Te Raki

Māori in 1840. In Stage 2 – currently in hearing – the Tribunal will complete its inquiry into claims that allege breaches of the treaty's principles since 1840.

The Tribunal's report addresses a core issue raised by Ngāpuhi and other Te Raki claimants: whether the Crown assumed more authority from the treaty than had been agreed to by the rangatira. The claimants' case placed particular emphasis on he Whakaputanga o te Rangatiratanga o Nu Tirani – the Declaration of Independence of the United Tribes of New Zealand – signed by rangatira of the Bay of Islands and Hokianga in 1835. He Whakaputanga, they said, was an unequivocal assertion of their sovereignty, an assertion confirmed by the guarantee of tino rangatiratanga in te Tiriti, which their tupuna signed less than five years later.

Across five hearing weeks in 2010 and early 2011, the Tribunal heard evidence from numerous claimants who conveyed their kōrero tuku iho, as well as expert historians, linguists, anthropologists and other scholars.

The report covers a broad span of history leading up to the signing of te Tiriti at Waitangi, Mangungu and Waimate in 1840. At the outset, the Tribunal poses what it considered to be the two central questions under consideration: 'Did the rangatira of the Bay of Islands and Hokianga cede sovereignty – that is, the power to make and enforce law – to the British Crown when they signed te Tiriti o Waitangi in February 1840? If not, what was their understanding of the relationship they were establishing with the Crown?'

The Tribunal's answer to these questions begins with an outline of the origins and evolution of the hapū of the Bay of Islands and Hokianga, and the systems of law and authority they came to exercise within their territories. These systems are contrasted with the origins and evolution of the British people, their political institutions, and the British Empire up to the mid-eighteenth century.

Members of the Te Paparahi o Te Raki panel at the handover ceremony. From left to right: Joanne Morris, Kihi Ngatai, Judge Coxhead, Professor Richard Hill and Sir Ranganui Walker.

The report then traces the history of encounters between British people and northern Māori from the time of Captain Cook's first journey to the South Pacific in 1769. These encounters increased apace at the turn of the century, with the arrival of whalers, sealers, traders, explorers and missionaries, contact that was spurred by the founding of the penal colony in New South Wales in 1788. Soon, Māori were engaging with the wider world. Rangatira of the Bay of Islands and Hokianga began to form relationships with British authorities, particularly the governors of New South Wales, which were strengthened by a key meeting in 1820 between Hongi Hika and King George IV.

The report describes how in the early 1830s increased British economic activity and disruptive frontier activity effectively outside the reach of British law led to the appointment of James Busby as Britain's first official representative. Although the authorities in Britain depicted this as signifying a 'friendship and alliance with Great Britain', the Tribunal concluded that it amounted to a growing understanding rather than a formal alliance between northern Māori and the Crown:

> Britain would offer the chiefs protection from other powers and help establish New Zealand's international status. It would also do its utmost to ensure that Māori were not injured by British settlers. In return, the rangatira would continue to assist the interests of British commerce in New Zealand and would themselves refrain from attacking British subjects.

Early in his residency, Busby called the rangatira together at Waitangi. At the hui they considered he Whakaputanga, which was signed by 34 rangatira on 28 October 1835 and subsequently by a further 18 rangatira. The report analyses in detail the Māori and English texts of the declaration, how they were prepared and the intentions of the various parties.

Busby wanted to create a national congress of principal rangatira to make laws and adjudicate disputes. The Tribunal concludes that though the initiative was Busby's, for those rangatira

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Judge Coxhead and Kingi Tauroa at the handover ceremony.

who signed it he Whakaputanga was an unambiguous assertion of the mana and rangatiratanga of the hapū. Busby's legislature was not reflected in the Māori text. Instead, the rangatira would come together from time to time to make laws for the regulation of the frontier.

Turning its attention to the late 1830s, the Tribunal considers the question of whether the rangatira of the Bay of Islands and Hokianga were beginning to lose control as contact between Māori and traders, settlers and missionaries intensified. The report looks at a range of factors, including the influence of Christianity and literacy, changing economic circumstances, the impact of disease and warfare, and the effects of land transactions. The general picture, the Tribunal concludes, is one of overriding, but not absolute, continuity:

> Within Māori communities themselves, Māori control remained more or less complete. Māori laws, values, and social and political structures endured. Where changes occurred – for example when individuals or communities adopted Christianity or farming – these changes occurred voluntarily, and in ways that accorded with Māori values.

Nevertheless, reports of 'fatal impact' were crucial in spurring the authorities in Britain to seek greater formal control in New Zealand. The Tribunal looks at the events leading up to Britain's decision to despatch Captain William Hobson to New Zealand with instructions to 'treat with the aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those Islands which they may be willing to place under Her Majesty's dominion'. Although the British authorities were initially reluctant to sanction a plan for colonisation, the pre-emptive action of the New Zealand Company led the Crown to seek to acquire sovereignty and engage in colonisation by its own hand.

***A Reconstruction of the Signing of the Treaty of Waitangi, 1840**. The painter, Leonard Mitchell, endeavoured to capture details of the scene recorded by Colenso, such as the chiefs' dogskin cloaks, Marupō (in the foreground) urging the assembled rangatira to reject the treaty while the signings went on, and Hobson's lack of a uniform.*

The Tribunal then closely examines the events surrounding the signings of te Tiriti at Waitangi, Waimate and Mangungu. The report draws on the claimants' oral testimony, expert evidence, primary written accounts of the events, as well as the large array of scholarly interpretations, previous Waitangi Tribunal reports and court judgments. It sets out in detail how the two texts of the treaty were prepared, what was said at the various hui and the various accounts of the intentions of the parties.

In its final chapter, the Tribunal sets out its conclusions as to the meaning and effect of the treaty, which it summarises as follows:

- The rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain. That is, they did not cede authority to make and enforce law over their people or their territories.
- The rangatira agreed to share power and authority with Britain. They agreed to the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests.
- The rangatira consented to the treaty on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis.
- The rangatira agreed to enter land transactions with the Crown, and the Crown promised to investigate pre-treaty land transactions and to return any land that had not been properly acquired from Māori.

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Tribunal Strategic Direction 2014–2025

The Waitangi Tribunal's strategic direction for the next decade and its principal goals are outlined below.

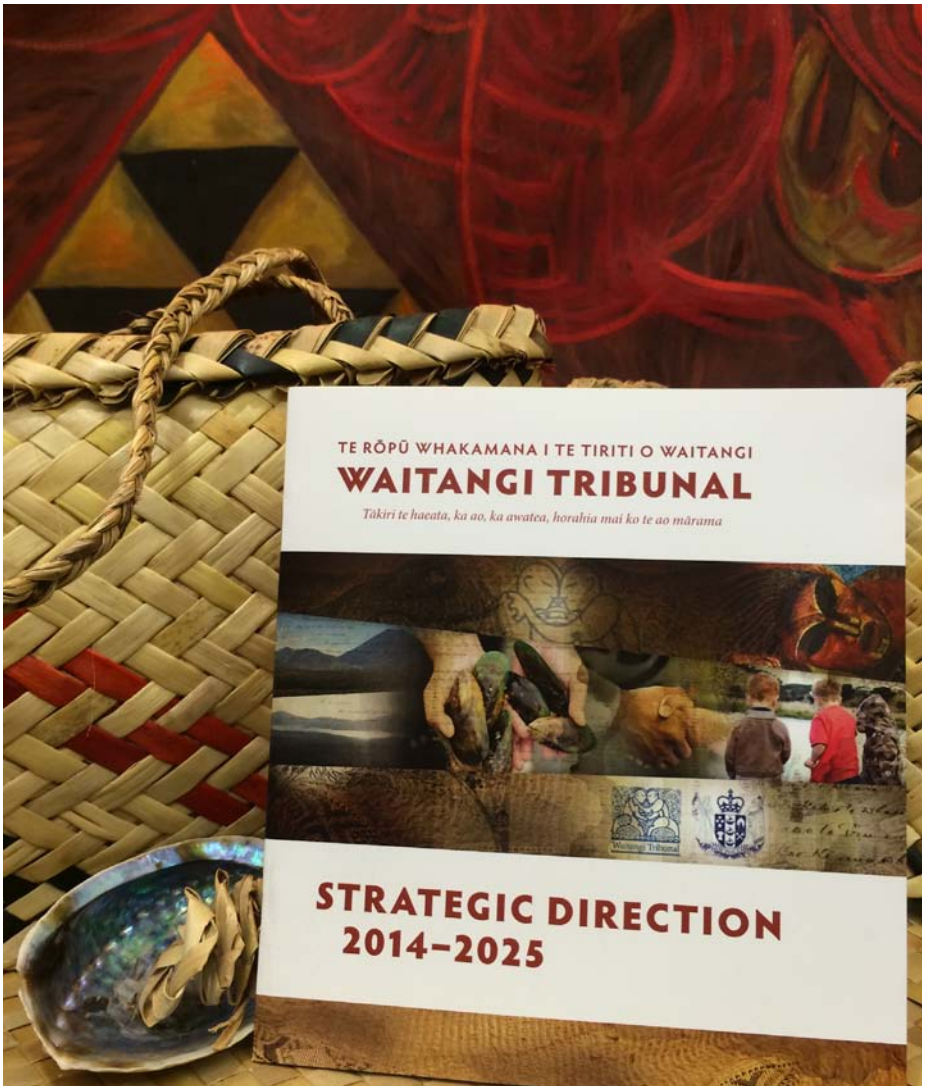
Threshold of change

The Tribunal's final district inquiries are well under way. In 1985, its jurisdiction was extended back to 1840, enabling Māori to bring claims alleging historical breaches of the Treaty. Soon, the number of claims far outstripped the Tribunal's ability to hear them one by one. The Tribunal responded by setting priorities and grouping claims by district for joint inquiry.

Over the past two decades, the district inquiry programme has been the Tribunal's main forum for hearing claims. In order to meet the wish of Crown and Māori to complete speedy and durable settlements of all historical claims (grievances about Crown policies and actions from 1840 to 1992), the Tribunal has given them general priority.

Some contemporary (post-1992) claims have also been included in district inquiries or given priority because of the importance of the issues raised. Others have been heard under urgency where there was demonstrated risk of immediate and irreversible prejudice. Altogether, the Tribunal has released some 75 non-district reports on specific and urgent claims.

The Tribunal is approaching the completion of its district inquiry programme. To date, it has reported on 18 of the 37 districts nationwide, covering 76 per cent of New Zealand's national territory. The six inquiries in progress include a further 11 districts. When they finish, the Tribunal will have reported on claims arising in 91 per cent of New Zealand's land area. In the remaining eight districts, the principal claimant groups have concluded Treaty settlements without a Tribunal inquiry or are negotiating directly with the Crown or preparing to do so.



The road ahead

The Tribunal has reported on or is currently hearing claims from many iwi and hapū groups across the country, covering a wide range of allegations of Treaty breach. But there is still substantial work ahead. More than 1,800 claims on the Tribunal's registry have yet to be fully heard or settled. Of these, more than 40 per cent have all their grievances currently under inquiry. Another 6 per cent are in negotiation with the Crown for full settlement.

Some 950 remaining claims thus await full resolution. Just under half have had part of their claims addressed in previous and current Tribunal inquiries or Treaty settlements.

About three-quarters of the remaining claims have historical grievances. More than half of these were submitted close to the 1 September 2008 deadline for the submission of new historical claims. Others were filed after the respective district inquiry finished its hearings. Many raise historical issues specific to their hapū or whānau.

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Mangatū remedies hearing, Te Poho-o-Rawiri Marae, Gisborne, June 2012. Urgent remedies and other urgent inquiries must be accommodated within the strategic framework.

Almost as many claims also raise contemporary (post-1992) issues, often alongside historical grievances. Some of these have been left over from historical Treaty settlements. Others raise specific or local issues.

Some claims raise kaupapa (thematic) issues of national significance that affect Māori as a whole or a section of Māori, such as claims about adoption policy or the sustaining of te reo Māori. Aside from those granted priority or urgency, the Tribunal has generally set these for hearing after the completion of the district inquiries. More than 100 claims are framed in terms of national kaupapa issues and several hundred more include grievances that connect to broader kaupapa issues.

Since 2008, the Tribunal's registry has been closed to new historical claims. While new contemporary claims continue to be submitted, existing contemporary claims far outnumber them. It is on addressing this accumulated backlog of claims that the Tribunal seeks to focus.

Transformation

The Tribunal's overarching objective is to provide timely access to an appropriate pathway for all claimants who have not yet settled and who wish to bring their unresolved grievances before the Tribunal. By adopting a comprehensive approach, the Tribunal aims by the mid-2020s to greatly reduce the backlog of claims awaiting inquiry. Success in this transitional strategy will transform the Tribunal into a body that hears contemporary claims within a short period of their being submitted.

Implementing the strategic direction will be guided by an order of priorities, which is:

- urgent inquiries, for those claims that meet the high threshold set by the Tribunal or that seek binding remedies;
- historical claims, including those in current district inquiries and kaupapa claims that raise historical grievances;
- contemporary kaupapa claims; and
- other contemporary claims.

There are two major transition points: 2020 and 2025. By 2020, the aim is to complete all historical claims and progress kaupapa claims, starting with historical and high priority issues.

By 2025, the aim is to substantially advance or complete the remaining kaupapa claims, address the remaining contemporary claims, and begin hearing new contemporary claims as they are filed.

District inquiries

About 900 claims are currently under action in the final six district inquiries. Of these:

- Te Urewera and Whanganui are in the later stages of completing their reports;
- Te Paparahi o te Raki (Northland) is in stage 2 hearings, and Te Rohe Pōtae (King Country) has just completed its hearings with closing legal submissions;
- Taihape and Porirua ki Manawatū are in casebook research and preparation for hearing.

The Tribunal intends to finish these inquiries by 2020, adding value to historical settlements by providing a public truth and reconciliation process and by making high quality findings and recommendations in a timely fashion.

At the same time, there is a backlog of historical claims that have been filed after district inquiries were completed. One of the key points in the strategy is that a process will be developed to deal with these claims in cases where Tribunal consideration of them is still needed.

Kaupapa claims

Kaupapa claims raise issues of national scope and significance. They fall outside the district-specific inquiries. A backlog has developed while the district inquiries are being heard. Kaupapa claims are often important to all Māori and raise vital issues for the Crown–Māori Treaty relationship. A number have already been heard under urgency for that very reason, such as the Wai 262 claim and the Kōhanga Reo claim.

The Tribunal's strategic goal is to enhance access to justice by ensuring that this backlog is significantly reduced by 2020. The Tribunal intends to start a new kaupapa claims inquiry

Chief Judge Wilson Isaac and Sir Tumu te Heuheu at the National Park report handover in 2013, which concluded the National Park district inquiry.

programme. As described elsewhere in this issue, the Tribunal has begun preparations for an inquiry into the claims of Māori military veterans. High-priority claims, including those with historical grievances, will be actioned by 2020.

Once the historical claims have been completed by 2020, and the kaupapa inquiry programme has been significantly advanced, the Tribunal will focus on hearing the remaining kaupapa claims, mainly concerning contemporary issues. It is estimated that this goal may be achieved by 2025.

Contemporary claims

Alongside the kaupapa inquiries, the Tribunal will address the backlog of other contemporary claims, which commonly focus on specific issues and local areas. This includes any post-1992 grievances left over from historical Treaty settlements that the claimants wish to bring before the Tribunal.

Urgent claims

As the pace and progress of Treaty settlements increases in the immediate future, the Tribunal will need to deal with urgent claims that arise as a result of settlement processes, such as claims about negotiation mandates or applications for remedies. The Tribunal's strategic goal is to consider and resolve any such urgent claims quickly, so that longstanding historical claims can be settled by Māori and the Crown in a timely but durable way. Mediation or other dispute processes may be used. Urgency applications arising from settlement negotiation processes are expected to reduce greatly once more historical Treaty settlements are completed and ratified.

In addition, other claims granted an urgent hearing will be fitted into the programme. These may include kaupapa claims about current government policies and actions, as well as claims about specific and local issues.

Outcomes

By achieving these strategic goals between 2014 and 2025, the Tribunal will assist the restoration and health of the Crown–Māori Treaty relationship, and enhance access to justice for all claimants, by ensuring that:

- all historical Treaty claims are resolved;
- disputes arising from the settlements process are heard and resolved;
- any urgent claims are heard and reported on;
- the backlog of kaupapa claims is addressed;
- the backlog of contemporary claims is addressed; and
- new contemporary claims are able to be heard and reported on promptly.

What next?

In order to fulfil its strategic vision and meet its goals for 2020 and 2025, the Tribunal will need to adapt itself and its processes not once but twice. The Tribunal will transition from

- a body currently focused on hearing hundreds of historical claims in large district inquiries, to
- a body focused on hearing groups of kaupapa claims of national scope and import, and then to
- a body focused on hearing and reporting on contemporary claims as they are filed.

Inevitably, processes and resources will need to be adjusted – but without compromising the fundamental values of a commission of inquiry and of a forum for truth and reconciliation between the Treaty partners. There is no denying that a challenging task lies ahead if the strategic goals are to be achieved in a timely fashion. There are many risks.

The first step is to develop an implementation plan. This work will be undertaken by the Tribunal and its administration, the Waitangi Tribunal Unit of the Ministry of Justice. The purpose of the plan will be to enable the Tribunal to adapt its resources (human and financial) and its processes so as to meet its strategic goals.

The Tribunal will also communicate with all claimants in the near future on the scope and order of inquiries in the kaupapa inquiry programme.

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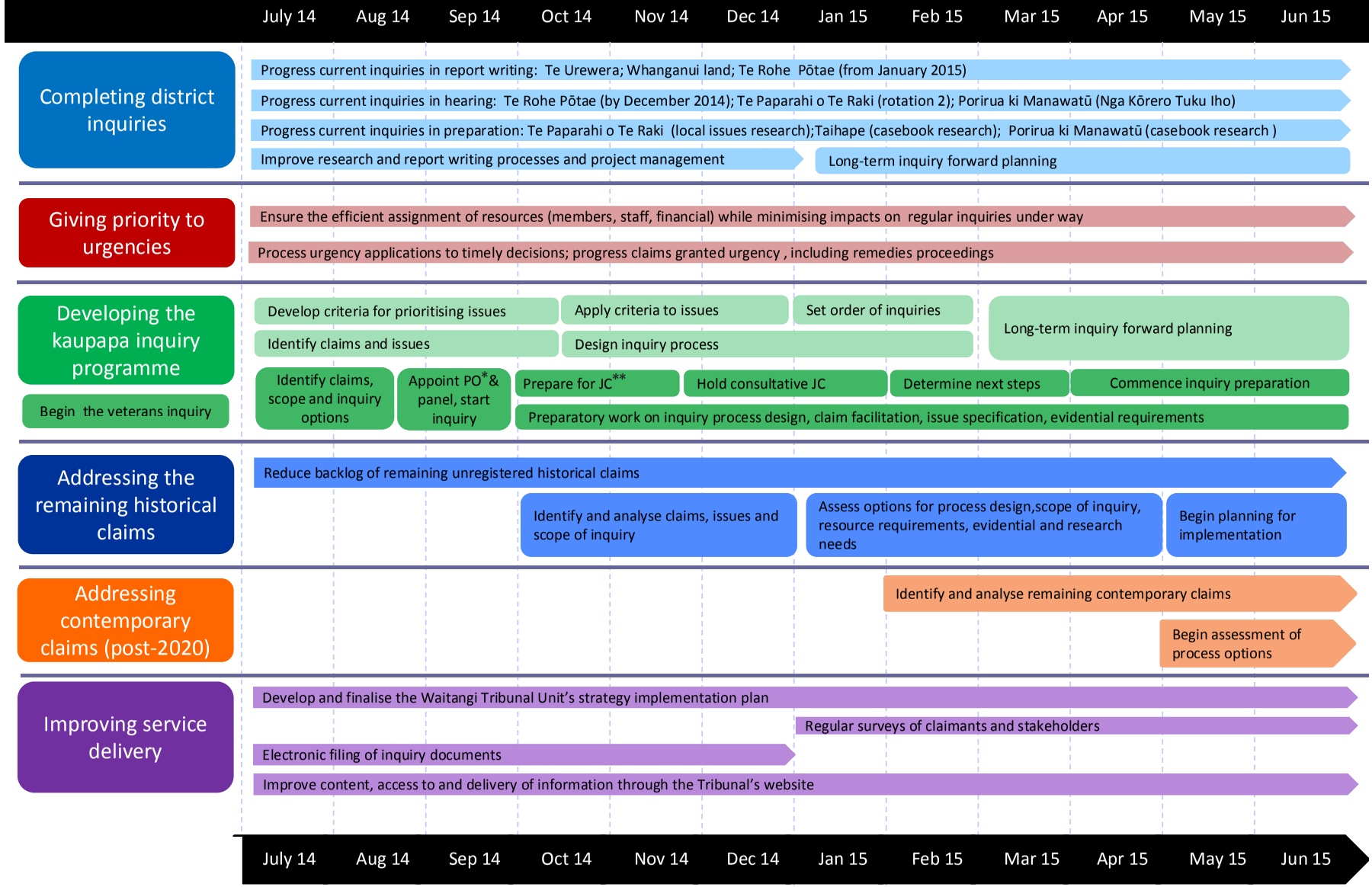
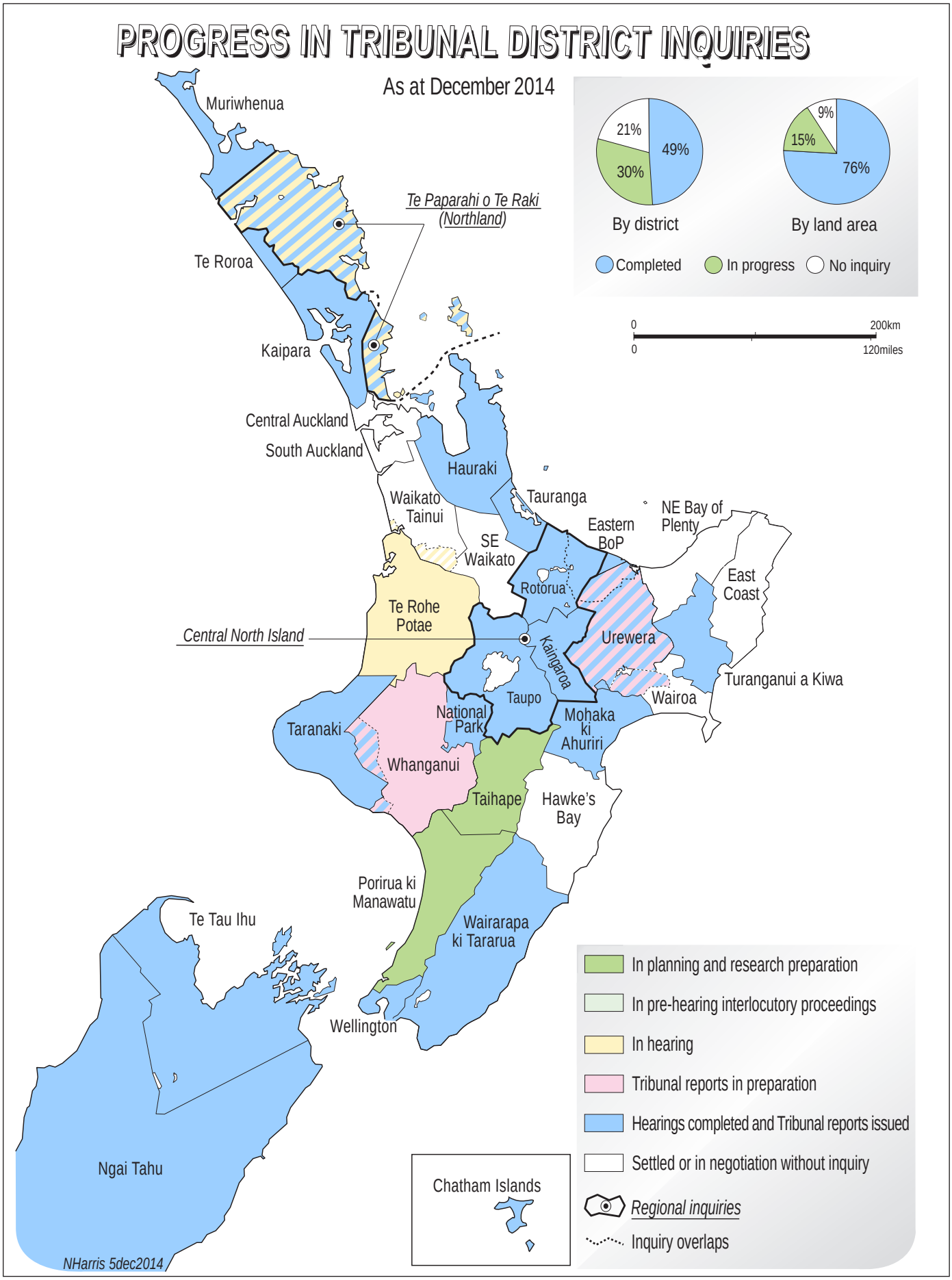
IMPLEMENTING THE TRIBUNAL'S STRATEGIC GOALS – The Current Year, 2014/15



*PO = Presiding Officer, **JC= Judicial Conference


PROGRESS IN TRIBUNAL DISTRICT INQUIRIES
As at December 2014
21%
49%
30%
By district
9%
15%
76%
By land area
Completed
In progress
No inquiry
0
200km
0
120miles
Muriwhenua
Te Paparahi o Te Raki (Northland)
Te Roroa
Kaipara
Central Auckland
South Auckland
Hauraki
Waikato Tainui
Tauranga
Eastern BoP
NE Bay of Plenty
SE Waikato
Rotorua
East Coast
Te Rohe Potae
Central North Island
Kaingaroa
Urewera
Turanganui a Kiwa
Taupo
Wairoa
National Park
Mohaka ki Ahuriri
Taranaki
Whanganui
Taihape
Hawke's Bay
Porirua ki Manawatu
Te Tau Ihu
Wairarapa ki Tararua
Wellington
Ngai Tahu
Chatham Islands
In planning and research preparation
In pre-hearing interlocutory proceedings
In hearing
Tribunal reports in preparation
Hearings completed and Tribunal reports issued
Settled or in negotiation without inquiry
Regional inquiries
Inquiry overlaps
NHarris 5dec2014

'In Pursuit of Mana Motuhake'

Māori wardens from Te Tai Tokerau at the hearing at Pipitea Marae, March 2014.

On 8 December 2014 the Waitangi Tribunal released *Whaia te Mana Motuhake: In Pursuit of Mana Motuhake*, its report on its urgent inquiry into the Government's review of the Māori Community Development Act 1962 and its attempt, through the Māori Wardens Project, to overhaul the administration of Māori wardens.

In September 2013 the New Zealand Māori Council and several District Māori Councils, institutions created under the 1962 Act, filed a claim challenging the Crown's right to conduct a review of the Act. This legislation, they said, represented a historic compact between Māori and the Crown, which the Crown had progressively undermined. In particular, they objected to the Crown's administration of the Māori Wardens Project, undertaken through the Ministry of Māori Development/Te Puni Kōkiri. This project, they alleged, displaced their exclusive statutory authority to control wardens.

The Tribunal heard the claim at Pipitea Marae in Wellington from 18 to 20 March 2014.

The Tribunal's report sets the scene with an account of the Māori pursuit of self-government from 1840. It examines in detail the series of negotiations that led to the 1962 Act. The Tribunal concluded that a compact was in fact forged between the Treaty partners. Between 1959 and 1963, Māori leaders came to agreements among themselves on the form of institutions they wished to be established, which they then negotiated for with the Government and were ultimately embodied in the 1962 Act. This Act, the Tribunal concluded, reflects an acknowledgement from the Crown that it must recognise and provide for Māori rangatiratanga at all levels.

The Tribunal found that the Crown's decision in 2013 to proceed with a Crown-led review of the 1962 Act was in breach of the Treaty principles of partnership and options. The Tribunal also agreed with the claimants that it was for them to lead the review process. Although the Māori Wardens Project was a necessary and positive development when it was launched in 2007, the continuance of the project after 2011 – when Māori oversight of the project through an Advisory Group was discontinued – was also a breach of Treaty principles.

The Tribunal made two principal recommendations. First, the review should be Māori-led, and a national hui could be organised under the Council's leadership, through which an independent working group would be elected. The working group would consult with Māori groups and institutions, and develop recommendations for the future of the Council and the Act, to then be negotiated with the Crown by the Māori Council.

Second, and principally, the Crown should accept that 'the recognition of Māori self-government and Māori self-determination reflected in the Māori Community Development Act 1962 must remain in legislation, and should underpin all future administration, policy development, and law reform in this area'. Any reforms should only enhance this core feature of the 1962 Act.

The inquiry was significant for being the first to consider the relevance of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to the claims. The Tribunal concluded that UNDRIP, which the Government affirmed in 2010, was relevant insofar as its articles illuminated Treaty principles. Accordingly, in the report the Tribunal also assesses the Crown's actions in terms of UNDRIP alongside its findings in terms of Treaty principles. ❐

The MV Rena Reports

On 9 December 2014 the Tribunal released its final report on its urgent inquiry into claims submitted by two Motiti Island groups concerning Crown actions in relation to the MV Rena. The grounding of the MV Rena on Otaiti (the Astrolabe Reef) in October 2011 is New Zealand's worst maritime and second worst environmental disaster.

The claims, lodged in May 2013, focus primarily on the terms and consequences of a deed the Government entered into with the Rena owners in October 2012, rather than the grounding itself or its immediate effects. Through this deed, the Government agreed to consider 'in good faith' whether to support a resource consent application made by the Rena owners to leave part or all of the remains of the wreck on the reef, should the owners decide to make such an application.

If the application succeeded with Government support, the Crown would be paid $10.4 million on top of other compensation it would receive for damage arising from the grounding.

The claimants alleged that by entering into a deed of this nature, the Crown breached its Treaty obligations to protect their interests and had also failed to consult them adequately on their interests. Following the submission of the owners' resource consent application on 30 May 2014, the Tribunal heard the claims in Tauranga from 30 June to 2 July.

On 18 July 2014 the Tribunal released an interim report on the Crown's consultation process before and after the Rena owners' resource consent application. Its purpose was to inform the Crown ahead of a Cabinet decision on whether to make a submission in support of the application.

The Tribunal found that the Crown had:

> failed to undertake meaningful engagement or robust consultation with Māori in relation to the Rena owners' resource consent application... On the evidence before us, it is clear that they will consider themselves to have been left alone to suffer the consequences of a decision in which they played no meaningful part, and through which they were rendered powerless to protect their taonga.

Subsequently, the Crown announced that it would partially oppose the Rena owners' application. By this decision, the Tribunal found in its final report, the Crown had avoided the 'primary prejudice that could have arisen' had it chosen to support the application.

However, the Tribunal found that the Crown had damaged its relationship with Māori through its failure to consult prior to entering into the deed and not disclosing its contents. In doing so, the Crown breached the principle of partnership and mutual benefit. 'The Crown has failed in its duty to act reasonably, honourably, and in good faith.'

The Tribunal recommended that the 'best way for the Crown to mitigate the prejudice and begin to rebuild its relationship with the claimants is to fulfil its Treaty duty of active protection in the resource consent process', and made specific recommendations to this end. ❐

Te Aroha Maunga Settlement Process Report

On 16 June 2014 the Tribunal released its report on its urgent inquiry into a claim brought by Ngāti Rāhiri Tumutumu about the Crown's Treaty settlement process in Hauraki. A hearing was held in Wellington on 7 and 8 May 2014. The report was released the following month, on 13 June.

The claimants alleged that the Crown had breached the principles of the Treaty by offering 1,000 hectares of Te Aroha maunga to the Hauraki Collective, a body established to negotiate and receive Treaty settlement assets on behalf of the twelve Hauraki iwi, of which Ngāti Rāhiri Tumutumu were a member. They alleged that the Crown's process in offering the land to the Hauraki Collective was flawed in failing to allow them to explore their aspirations for an exclusive return of land to the iwi.

In its report, the Tribunal found that the Crown did not breach Treaty principles in its conduct of the negotiations. While flaws in the process could be identified, the Tribunal considered that the broad initial support among the iwi for the return of the maunga to the Collective was critical to gaining momentum in the negotiations, and secured greater concessions from the Crown over the amount of land that would be returned.

Although the Crown adopted a high-risk strategy, Hauraki iwi accepted the risk and the Crown's conduct in this case, the Tribunal concluded, was consistent with the requirements for negotiating Treaty settlements. ❐

◂ *from page 6*

- The rangatira appear to have agreed that the Crown would protect them from foreign threats and represent them in international affairs, where that was necessary.

The Tribunal analyses the differences between the two treaty texts, in particular that while under the English text the rangatira ceded sovereignty to Britain, the Māori text guaranteed Māori authority. It considers that an agreement was nonetheless reached between the parties during the course of the kōrero that took place in the hui, at which Hobson and his agents presented the Māori text and reassured the rangatira that they would retain their authority. It concludes that the meaning and effect of the treaty can therefore be found in a combination of the text of te Tiriti, the kōrero of the rangatira and Hobson's verbal assurances.

He Whakaputanga o te Rangatiratanga o Nu Tireni, 1835.

These conclusions will form the basis of the Tribunal's inquiry in Stage 2. 'Was the agreement that was reached in February 1840 honoured in subsequent interactions between the Crown and Māori within our inquiry district? That, now, becomes the question.' ❐

Te Urewera Report Part V

The fifth instalment of the *Te Urewera Report*, released on 15 December 2014, focuses on issues relating to Lake Waikaremoana. In previous instalments, the Tribunal found that the Crown had breached the Treaty in bringing war to the Waikaremoana region, devastating homes and crops and progressively dispossessing the Māori owners of the majority of land surrounding the lake, leaving them in an impoverished state by 1930.

Part V completes the Tribunal's account of this story by examining the dispute over the use and ownership of Lake Waikaremoana, one of the longest running legal battles in New Zealand's history. In 1918, the Native Land Court found three groups – Ngāi Tūhoe, Ngāti Ruapani and Ngāti Kahungunu – to be the owners of the lakebed. The Crown, which was already using the lake for a Government tourism venture at that time, appealed the Court's decision. The appeal was not heard for 26 years; this long delay was mainly the fault of the Crown.

The 1929 opening of the Waikaremona hydro station.

When the appeal was finally heard in 1944, the Māori Appellate Court confirmed that the Crown did not own the lake. The Crown refused to accept the Appellate Court's decision or to allow the title to be completed for a further ten years. It was not until 1954 that the Crown finally accepted Māori ownership of Lake Waikaremoana – and it was not until 1971 that a lease was negotiated to pay for the Crown's longstanding use of the lake, which became part of Te Urewera National Park.

The Tribunal identified several breaches of Treaty principles in the Crown's actions in these events. The first was the failure to provide the Native Land Court with a title option that recognised lakes as taonga. Once the court had made its decision in 1918, however, the Crown made further significant errors by failing to proceed with or abandon its appeal in the 1930s and early 1940s. The Crown also breached the Treaty by refusing to acknowledge Māori ownership for a full ten years after it was confirmed by the Appellate Court.

The Tribunal found that the negotiation of the 1971 lease was mostly fair in Treaty terms, but that the Crown breached the Treaty in insisting that rents for use of the lake would only be backdated to 1967. The Crown had been using the lake without permission or payment for decades (and had earlier agreed in the lease negotiations to pay for past use). The Crown also refused to pay for using the lake to generate hydroelectricity. To make matters worse, the Crown had modified and permanently lowered the lake for hydroelectricity in 1946 without consultation or compensation for the damage this caused to the lake and its fisheries. Finally, the Crown's governance and management arrangements for the lake during the period of the lease failed to take adequate account of Māori interests.

The sixth and final part of the Te Urewera Report will be released later this year. ❐

Veterans - the First Kaupapa Inquiry

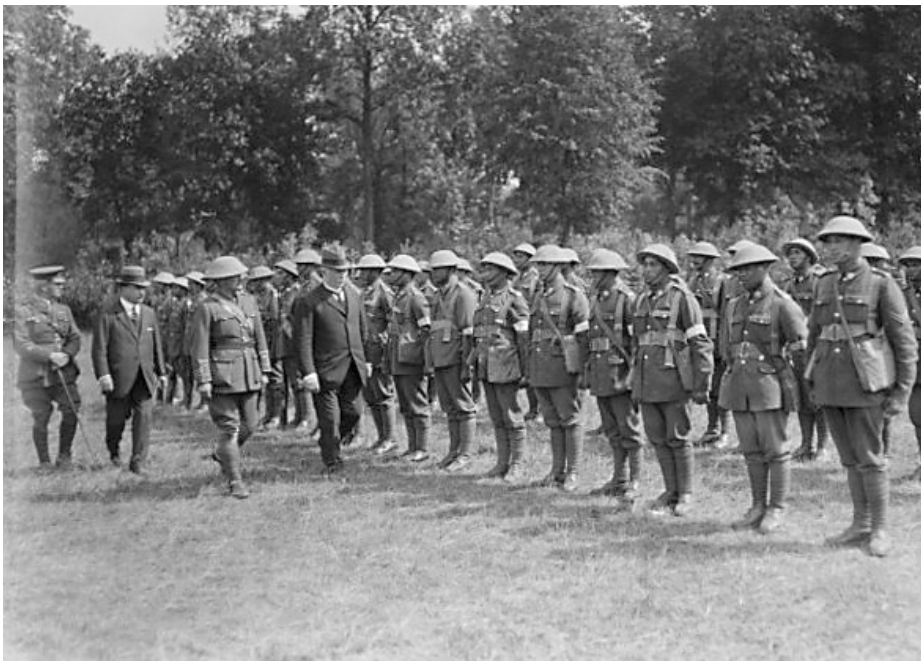
Peoples and nations around the world are marking the onset of the First World War a hundred years ago. New Zealand played its full part in that global conflict and the commemorations will involve the descendants of the many New Zealanders – Pākehā and Māori – who fought for their country on the battlefields of Europe.

It is fitting, remarked Chief Judge Isaac, Chairperson of the Waitangi Tribunal, when launching its strategic direction in July 2014, that in this centenary year the Tribunal's first kaupapa (thematic) inquiry should focus on the claims of Māori military veterans. Kaupapa inquiries are intended to address issues of national significance that affect Māori as a whole. Most would agree that the fair treatment of military veterans and their whānau eminently qualifies as such an issue.

Since the mid-nineteenth century Māori have served the Crown in many of New Zealand's military conflicts and missions at home and overseas. Over the last century these have ranged across the two world wars to more recent conflicts such as the Vietnam War and UN peacekeeping missions in modern times.

The Tribunal's inquiry will include all outstanding military veterans claims that the claimants wish to have heard. Some claimants are themselves veterans of overseas conflicts. Other claimants represent the descendants of veterans, their whānau, and tribal communities from many parts of the country. As many surviving veterans are of advanced age, it is all the more urgent that they have the opportunity to be heard in person and to achieve a resolution of their claims within their lifetime.

The claims raise two main groups of grievances against the Crown. The first concerns the treatment of Māori on active service. This includes such grievances as alleged discrimination against Māori allied with or serving the Crown in the New Zealand Wars of the 1860s, and higher casualty rates amongst Māori in World War II.



Henry Armytage Sanders (Alexander Turnbull Library, ½-013288-G)

Prime Minister William Massey inspecting the Māori Pioneer Battalion, Bois-de-Warnimont, France, 30 June 1918.

The focus of many claims, however, is on the treatment of Māori veterans and their whānau after demobilisation. One issue, which has arisen before in several Tribunal district inquiries, is alleged discrimination against Māori in the official resettlement schemes that enabled many returning servicemen to establish farms after the two world wars. Some claimants also allege that Māori land was lost to these schemes or as an indirect result of Māori war service.

A further issue concerns how Māori veterans and their whānau were treated in post-war rehabilitation programmes. A prominent feature is the alleged inadequacy of medical services and social support for Māori servicemen suffering from the long-term effects of exposure to the nuclear tests of the 1950s and to Agent Orange in Vietnam. These impacts, the claimants say, continue to have adverse health and cultural consequences today for affected Māori veterans and their descendants.

This inquiry (Wai 2500) is now in active preparation. The Chairperson will preside. Other members of the Tribunal panel that will hear the claims are the Honourable Sir Douglas Kidd (former minister and Speaker), Dr Monty Soutar (historian of the Māori Battalion), Dr Angela Ballara (historian and author) and Professor Pou Temara (professor of te reo and tikanga at the University of Waikato).

The Tribunal held its first judicial conference in Wellington on 17 December 2014 to begin planning the inquiry. The presiding officer has indicated that the Tribunal will hold early hearings for veterans and their whānau to give their evidence in person. To date, more than 40 Wai claims have been provisionally identified as participants. The deadline for claimants to indicate whether they wish their claims to be heard in this inquiry is Monday 2 March 2015. ❐