

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 73



Waitangi Tribunal

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Te Rohe Pōtae Handover



Tribunal member Dr Aroha Harris presents claimant John Kati with parts 1 and 2 of Te Mana Whatu Ahuru

THIS issue features the release of the first two parts of the Tribunal's report on the claims of Ngāti Maniapoto and other iwi in the Te Rohe Pōtae (King Country) district inquiry. We also cover the reappointment of five Tribunal members and the appointment of three new members, the hearings of the Te

Ātiawa/Ngāti Awa ki Kapiti claims, the end of the hearings in stage 2 of the National Freshwater and Geothermal Resources Inquiry, the hearing of claims concerning the primary healthcare system, and the preliminary views of the Taihape Tribunal on the issue of landlocked Māori land. □

From the Chairperson

THE second half of 2018 has proven to be a very intensive time for Tribunal inquiries. The handover of parts I and II of the Te Rohe Pōtae (King Country) report in September was an important milestone for the Tribunal and the iwi of Te Rohe Pōtae. The report addresses the Crown's invasion of the Waikato, the confiscation of land, and the Crown's failure to keep important promises of self-government made to Te Rohe Pōtae chiefs in the 1880s (see page 7).

While work continues on the district inquiries, we are also making significant progress on the kaupapa (thematic) claims. Four kaupapa inquiries are under way, with two more about to start: housing and mana wāhine. The kaupapa programme will be further aligned to claims about pressing contemporary Crown acts or policies that affect all or many Māori. I anticipate that a staged approach will become more common in cases where the Crown and claimants will benefit from an early inquiry and report. There may also be new targeted inquiries on particular issues, examples being the national freshwater and Marine and Coastal Area Act inquiries. The Tribunal will continue to assist in this



way with the reconciliation of the Treaty partners.

In addition to conducting four district inquiries in report writing and hearing, six kaupapa inquiries, and three remedies hearings, we also have to prioritise claims granted urgency. Four new urgent inquiries will start in the first half of 2019: the Mana Ahuriri mandate claim; the Ngāti Maniapoto Māori Trust Board mandate claims; the Hauraki settlements claims; and the Māori prisoners claim. The Tribunal is having its most active year ever in terms of hearings and event days, and the resources of members and staff are at full stretch. In particular, there is significant pressure

on the kaumātua members, who are required to sit on multiple hearings. New urgencies will likely delay progress in housing and mana wāhine.

At the same time, the burden on claimants is also a concern in kaupapa inquiries, where the Crown Forestry Rental Trust does not fund research or assist claimants. The result is an increased demand on the Tribunal to commission all the necessary research from its limited resources. The situation also puts a great deal of pressure and costs on the claimant community. It creates a risk that the claimants will not have a level playing field with the Crown in Tribunal hearings. In my view, a way needs to be found to substitute effectively and fairly for the Crown Forestry Rental Trust's previous role.

Finally, I would like to welcome new members who have been appointed recently and to thank outgoing members for their service and dedication to the work of the Waitangi Tribunal.

A handwritten signature in black ink, which appears to read 'Wilson Isaac'.

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 over the last six months.

I first want to acknowledge the challenging work the staff are carrying out to deliver services to the Tribunal across a range of inquiries. I am proud of the ways in which they are



responding to those challenges with the usual standards of high-quality and professional work. Noticeably as well, staff are demonstrating flexibility and agility to ensure that the Tribunal is well supported as the inquiry programme develops.

I am also very pleased with staff efforts to work cooperatively across the teams while at the same time

Member Appointments

THREE new Waitangi Tribunal members have been appointed and five current members reappointed, all for terms of three years.

Ruakere Hond

Dr Ruakere Hond (Taranaki, Te Ātia Aa) is a longstanding advocate of te reo Māori and a stalwart of the Parihaka community. He has held several leadership roles in Māori-language organisations, including Te Reo o Taranaki, Te Whare Wānanga o Awanuiārangi, and Te Ataarangi. He has served two

Dr Ruakere Hond



terms as a member of Te Taura Whiri i te Reo Māori and is currently a member of Te Mātāwai, which leads the implementation of the Maihi Māori language strategy. He was a negotiator in the Treaty settlement process for his Taranaki iwi and was instrumental in work to achieve reconciliation between the Crown and the Parihaka community. In 2013, Dr Hond completed a PhD in public health on Māori-language revitalisation, community development approaches, and intergenerationally sustainable health outcomes. He is currently undertaking a post-doctoral fellowship on innovative Māori public health research that directly informs interventions to improve health outcomes for Māori. It also involves working with Taranaki Māori communities to build health research capacity and capability.

Prue Kapua

Prue Kapua (Te Arawa) is the principal of Tamatekapua Law and has an extensive background in resource management and the Treaty sector. She has supported whānau, hapū, and iwi claimants in several Waitangi

Tribunal inquiries. She was a member of the Refugee Status Appeals Authority, deputy chair of the Medical Practitioners Disciplinary Tribunal, and a director of First Health NZ Ltd (a Southern Cross NZ Ltd subsidiary). In 2000, the Minister of Health appointed her to represent the interests of Māori women in the Gisborne Cervical Cancer Inquiry. Ms Kapua also advised the Ministry of Health on its Treaty policy in respect of a national screening programme. She has been a member of the Ministry of Health's National Kaitiaki Group and an external specialist adviser on legal

Prue Kapua



raising the unit's cultural competency. More on this can be found in the noho marae story in this edition.

I would finally like to acknowledge our mapping officer, Noel Harris. As public servants, we operate mostly behind the scenes, our contribution at times going unnoticed by the wider public. Occasionally, however, we have the opportunity to

celebrate our efforts. In November 2018, Noel was awarded a State Service Commissioner's Commendation for Frontline Excellence. Noel was the only Ministry of Justice staff member to be put forward for this award, and he was just one of nine recipients from across the public service nationwide. Congratulations once again to Noel for the recognition of his contribution

to the Tribunal and for enhancing the work that we all undertake on a daily basis.

Kia ora rā.

Grace Smit
Director



aid funding for Waitangi Tribunal claims. She is the current president of the Māori Women's Welfare League.

Kim Ngarimu

Kim Ngarimu (Ngāti Porou) has an extensive public service career dating back to the early 1990s. After leaving Te Puni Kōkiri in 1999, she worked in the office of the Auditor-General as a sector manager and co-directed her management and public policy consulting company, serving in 2004 as acting director of the Waitangi Tribunal. Between 2007 and 2013, she held the position of deputy secretary policy at Te Puni Kōkiri, and in 2012 she served as acting chief executive of the Ministry of Women. She is currently self-employed as a consultant and a professional governor. Among other appointments, she is a member of Te



Kim Ngarimu

Māngai Pāho, a review panel member for Whānau Ora, a member of the Medical Council of New Zealand, a board member of Capital & Coast District Health Board, and a member of Heritage New Zealand's board and the Māori Heritage Council.

Nau mai haere mai to our three new members.

We also congratulate the following five members on their reappointment to the Tribunal: Dr Angela Ballara, Ron Crosby, Tania Simpson (Tainui, Ngāpuhi, Ngāi Tahu), Dr Monty Soutar (Ngāti Porou, Ngāti Awa), and Professor Pou Temara (Ngāi Tūhoe).

The Minister for Māori Development, Nanaia Mahuta, has confirmed that four members – Professor Derek Lardelli (Ngāti Porou, Rongowhakaata), Dr Hauata Palmer (Ngāti Te Rangi), David Cochrane, and Lady Tureiti Moxon (Ngāti Pahauwera, Ngāti Kahungunu, Kai Tahu) – are not being reappointed. In acknowledging the departing members, the chairperson thanked them for their contributions to the work of the Tribunal.

Dr Palmer and Mr Cochrane will continue to serve on the panels to which they have been appointed to complete the inquiries concerned. □

Four New Urgent Hearings Granted

THE Tribunal has recently granted urgency to four inquiries. The first is the Mana Ahuriri Inquiry, which concerns the claim of an Ahuriri hapū, Ngāti Pārau, about a Treaty settlement mandate. Ngāti Pārau argues that Mana Ahuriri Incorporated does not have a mandate to settle their claims. A mediation conducted by the Tribunal did not resolve the dispute.

The second urgent inquiry concerns claims about the mandate of the Maniapoto Māori Trust Board to settle the claims of a number of groups in Te Rohe Pōtae.

The third inquiry concerns assertions that the Crown's "overlapping claims" process has not worked well in the Hauraki settlement. The claimants dispute parts of the redress which has been offered to Hauraki iwi. One of the issues relates to the Tauranga Moana Forum, a governance body for

the Tauranga Harbour. Another relates to the treatment of Ngāti Porou ki Hauraki within the settlement.

The fourth grant of urgency concerns two claims about prisoners' voting rights. These claims are about the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010. Under this Act, all prisoners are disqualified from voting in general elections. According to the claimants, the Act breaches their right to vote, significantly reduces the number of Māori who can vote, and therefore impacts on the number of Māori electorates. The Tribunal noted that the courts have already ruled that the disqualification of all prisoners from voting is a breach of New Zealand's Bill of Rights. But the question of whether it is also inconsistent with the principles of the Treaty of Waitangi has not been decided. The Tribunal had granted a

hearing in 2014, but the claimants were unable to proceed at that time. A second urgent application was declined in 2017 because it could not be heard before the general election of that year. The Tribunal has now granted urgency so that the claims can be heard and reported on before the 2020 general election.

It is expected that hearings for these urgent inquiries will begin in early 2019. □

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Staff Profiles

Ani Brunet

Ani Brunet, who grew up in Kawerau, recently joined the Waitangi Tribunal Unit as the manager of the Inquiry Facilitation Team. This team leads much of the engagement with the claimants, counsel, and judiciary.

Ani has a background in community development, environmental law, and mediation. Her first role out of university was with the Huakina Development Trust, Tainui iwi's environmental arm. She worked in a team to write the iwi management plan for the Manukau Harbour. She also worked in Whāingaroa (Raglan) in community and environmental matters, ranging from Māui dolphin campaigns and waste reuse and recycling, through to healthy kai and community well-being initiatives. Her most recent roles were at Auckland Council working with communities in zero-waste programmes and then in emergency management.

Ani grew up in a family of keen "boaties" around the Rotorua lakes and later the Hauraki Gulf and

Inquiry Facilitation Team manager Ani Brunet



Northland. Her parents built or fitted out the boats they sailed, and she remembers it was never about "perfection"; instead, as soon as the boats were "comfortable enough", the family would be off on big sailing adventures. This spurred her commitment to making a contribution to communities living well, caring for, and enjoying the land and waterways of Aotearoa.

Ani feels moving to the Waitangi Tribunal Unit is coming "full circle" in a career which began with studying law, public policy, and te reo Māori under influential teachers such as Dr Margaret Mutu, Dr Ranginui Walker, and Professor Jane Kelsey. Working in communities, in policy development, and alongside Māori has remained her passion.

Noel Harris

Noel Harris joined the Waitangi Tribunal Unit, then part of the Department of Justice, in 1990 and has provided 28 years of continuous service in the same role. As mapping officer, Noel's technical excellence is second to none, and his skills in producing high-quality maps increase the accessibility of the Tribunal's reports. His care for, and kaitiakitanga of, the material he works with is well recognised by his peers and by the claimant community. In his role, Noel continually focuses on "accessibility", realising the power and importance of this to the public whom we serve.

Noel's commitment to public service was recognised earlier this month when he received a State Services Commissioner's Commendation for Frontline Excellence. Noel was joined by family members at the ceremony at Parliament's Banquet Hall, which saw him join just eight other recipients from across the public service in



Mapping officer Noel Harris

receiving their awards. The commendations were for people who demonstrate exceptional care and commitment to New Zealanders; demonstrate the highest standard of integrity, kaitiakitanga, and the right attitude; and generate pride in the public sector.

In typical Noel fashion, his response was "Why me?" when asked what was the first thing he thought when he found out about the award. Following the ceremony, Noel said he felt "humbled". "I hadn't realised the scale of it, there were people from all over New Zealand – all just doing their bit for the public."

Congratulations to you, Noel, on receiving this well-deserved acknowledgement of your skills, knowledge, and dedication. □

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For the very latest information on claims, hearings, and reports, visit the Waitangi Tribunal's website:

www.waitangitribunal.govt.nz

Staff Noho Marae 2018

WAITANGI TRIBUNAL UNIT staff, together with their colleagues from the Chief Judge's Chambers and Business Support, attended a noho at Hongoeka Marae in Plimmerton over 21 and 22 August 2018. In line with the unit's commitment to improving cultural competency, the two-day event brought staff together to foster whanaungatanga and to provide an opportunity to strengthen their knowledge of te ao Māori.

After a warm welcome from tangata whenua Ngāti Toa Rangatira and a kapu ti, local kaumātua Brian Gunson gave a kōrero about the history of Te Heke-mai-raro (the wharenuī). A panel led by Chief Judge Isaac and Judges Reeves and Coxhead discussed

the inquiry work programme and what they had learnt from previous inquiries. A staff session followed, with team managers Andrew Francis and Kylie Fletcher focusing on the year ahead for the unit.

The afternoon was spent braving the wet conditions to hear from pūkōrero (spokesperson) Kahu Ropata of Ngāti Toa Rangatira about some of the iwi's sites of significance and taonga. Staff were told of Ngāti Toa's connections to the surrounding lands and visited Matai-taua Pā (now St Alban's Anglican Church, Pauatahanui) and the *Whiti Te Rā – The Story of Ngāti Toa Rangatira* exhibition at Pātaka Art + Museum in Porirua. For those staying overnight, there was a series of kēmu (games) and a patapātai (quiz)

to challenge the body and mind and keep them entertained into the night.

The second day brought much better weather and an engaging discussion of tikanga with the unit's te reo Māori kaiako Purere Winterburn and cultural adviser Racheal McGarvey. Later, a session on mihimihi saw all staff develop and practise their mihi and personal pepeha.

For some of the newer staff, this was their first noho marae experience and it was great to see our more culturally competent staff sharing their knowledge and guiding others. The noho marae was a well-orchestrated, successful, and enjoyable event, thanks to the hard work of the organising committee and the hospitality of the hau kāinga. □

Waitangi Tribunal Unit staff with Kahu Ropata and the anchor stone of Kupe's waka, Pātaka Art + Museum



Te Mana Whatu Ahuru

THE first two parts of the Tribunal's report on Te Rohe Pōtae (King Country) claims were presented to claimants at a ceremony in Wellington on 11 September 2018. Representatives of the main iwi groups that are participating in the inquiry attended, including Ngāti Maniapoto, Ngāti Hikairo, Ngāti Tūwharetoa, and the peoples of the Whāingaroa (Raglan) and northern Whanganui regions.

The Tribunal inquiry panel comprises Deputy Chief Judge Caren Fox, Sir Hirini Mead, Professor Pou Temara, John Baird, and Dr Aroha Harris. Deputy Chief Judge Fox was appointed presiding officer after the death of Judge David Ambler in 2017. The ceremony was a moving occasion, at which all five panel members took the opportunity to speak to the report's contents and the significance of the event. Claimant representatives also spoke, expressing their gratitude to the Tribunal for releasing parts I and II of the report, recalling their memories of the hearings, and paying tribute to those who had since passed away.

Many of those who spoke at the handover acknowledged the commitment and contribution made by Judge Ambler to the inquiry. Judge Ambler's widow, Te Tai Ambler, presented the report on behalf of the Tribunal to the deputy chair of the Maniapoto Māori Trust Board, Keith Ikin.

The Tribunal issued these first two parts in advance of the full report in response to requests from the Crown and claimants for an early release of its findings on key issues. The title of the report, *Te Mana Whatu Ahuru*, was adopted from the term which, the Tribunal was told, Ngāti Maniapoto use for the power of rangatira to rally their people for shared purposes.

The report reviewed the circumstances of the signing of the Treaty of Waitangi in the district. The Tribunal



Claimant Harold Maniapoto speaking at the Te Rohe Pōtae report presentation ceremony

concluded that the rangatira who signed the Treaty retained their tino rangatiratanga (full chiefly authority) while granting the Crown kāwanatanga (a right to govern and make laws). This right was to be used to control settlers, to protect Māori rights and authority, and for the benefit of both peoples.

In the first two decades after the Treaty, the Crown's presence in the district remained limited. It nevertheless bought approximately 150,000 acres of land. The Tribunal found that the way these purchases were conducted breached the principles of the Treaty. Rangatira from the district were among those who joined the Kīngitanga movement in the late 1850s as a way to protect their lands and form a more equal relationship with the Crown.

The Tribunal found that the Crown rejected opportunities to recognise the Kīngitanga. Instead, Crown soldiers invaded Waikato in 1863, seeking to suppress the Kīngitanga by force and to confiscate land for settlement. As a result of the Waikato raupatu (war and

confiscation), more than 1.2 million acres of land in Waikato were taken, including some from Ngāti Maniapoto. The Tribunal noted that histories often leave out that fact and found that the Crown's actions amounted to serious Treaty breaches.

The Māori King, Tāwhiao, was exiled with his people to Te Rohe Pōtae, which encompassed all territories from northern Taranaki to southern Waikato. The name "Te Rohe Pōtae" refers to oral traditions that record how Tāwhiao placed his pōtae (hat) on a map of the district to indicate the territory over which the Kīngitanga held sway.

For 20 years, Te Rohe Pōtae leaders defined and maintained an aukati (Māori zone of authority) over the territories. They maintained their authority and independence from the Crown throughout this period, while seeking to bring the Treaty into effect in the region through negotiations with the Crown.

The central issue addressed in the report was the period of negotiation



Hui at Whatiwhatihoē, circa May 1882, one of a series where Māori leaders and Crown representatives tried to agree on how to recognise Māori authority

and agreement between Te Rohe Pōtae leaders and the Crown from 1883 to 1885. This process is known by the claimants as Te Ōhākī Tapu.

At the time, the Crown wanted to put the North Island main trunk railway through the heart of their territory. Te Rohe Pōtae Māori petitioned Parliament in June 1883 to demand that the Crown use its kāwanatanga to give effect to the Treaty's article 2 guarantee of tino rangatiratanga. They sought "mana whakahaere" over their territories, which the Tribunal understood to mean the practical application of tino rangatiratanga by ongoing Māori political, judicial, and administrative control.

The Tribunal found that Te Ōhākī Tapu provided the Crown with an opportunity to advance the Treaty relationship in the district to a new level. Just as it had failed to recognise the Kīngitanga, the Crown once again failed to take advantage of this new opportunity. The chiefs understood that they had agreement for the Crown to recognise their authority in their district, but the Crown took an opposite view once it had secured agreement to the railway. The Tribunal found the Crown's actions to be fundamental breaches of the Treaty: "Crown agents throughout this period acted with dishonest and misleading negotiation tactics and promises, which in

turn led to breakdowns in iwi relationships, land loss, and massive prejudice across the district, the impacts of which last to this day."

Te Rohe Pōtae Māori agreed to gift land for the railway to the Crown, but they asked that the railway be given the name of their tupuna (ancestor) Tūrongo. The Tribunal found that the Crown did not keep to many of the agreements it made with Te Rohe Pōtae Māori about the railway. These included limiting the amount of land taken, paying compensation, and protecting sites of significance to Māori.

The Crown quickly acted to provide for large-scale European settlement. From 1886, the Native Land Court began to operate in the district but without the level of control and input into title decisions by Te Rohe Pōtae leaders that they understood had been agreed to by the Crown. The court individualised land titles against the express wishes of Te Rohe Pōtae Māori, who also bore an unfair share of the costs of the system. The Tribunal found that this led to the rapid fragmentation and sale of land outside of community control, all of which caused serious damage to Māori community structures.

Māori of the district were, for the most part, collectively opposed to land sales. Yet, between 1890 and 1905, more than 640,000 acres – a third of

the district – passed out of Māori ownership. The Tribunal found that the Crown breached the Treaty on many occasions as it carried out its purchasing programme. The Government used its law-making powers to control sales and keep prices low, while its agents frequently adopted questionable methods and tactics.

The Tribunal stated that what was needed now was for the Crown and Te Rohe Pōtae Māori to work together on how to give practical effect to the Treaty in the district: "To put matters right, the Tribunal considers the Crown must now take steps to provide for the exercise by Te Rohe Pōtae Māori of their tino rangatiratanga and mana whakahaere within their rohe."

The best way to achieve this, the Tribunal said, would be for the parties to decide through negotiations, but it considered that minimum conditions would need to be met.

The Tribunal recommended that the Crown introduce legislation that recognises the rangatiratanga of Te Rohe Pōtae Māori. In this way, the Crown could affirm their rights to autonomy and self-determination within their rohe. The legislation should impose a positive obligation on the Crown to give effect to those rights, the Tribunal said, while also providing for the practical exercise of rangatiratanga. □

Te Ātiawa / Ngāti Awa ki Kāpiti

THE Porirua ki Manawatū Tribunal is presently hearing the claims of Te Ātiawa / Ngāti Awa ki Kāpiti. The Tribunal members are Deputy Chief Judge Caren Fox, the Honourable Sir Doug Kidd, Dr Monty Soutar, Tania Simpson, and Dr Grant Phillipson. Due to the settlement of some iwi claims in the district, the Tribunal is hearing the remaining iwi in phases. A report on Muaūpoko claims was released in June 2017.

The first hearing was held at El Rancho Christian Camp at Waikanae Beach in August 2018. The Tribunal heard from a number of Te Ātiawa / Ngāti Awa ki Kāpiti claimants, who

expressed distress about the losses of land, waterways, and other taonga in their district. Some of those losses are very recent, such as when the Kapiti expressway was driven through a wāhi tapu, the Takamore urupā. The Tribunal was taken to see the impact of the traffic on the urupā. Most Te Ātiawa / Ngāti Awa land was lost in the nineteenth and early twentieth centuries. Some claimants spoke about their ancestor Wiremu Parata, who was a Māori member of Parliament and tried to hold the land for his people. The Tribunal heard evidence that unfair tactics were used to buy Māori land.

The second hearing was held in

October 2018 at the Southward Car Museum in Paraparaumu. Historians gave evidence about how rating was used in the twentieth century to obtain Māori land in Waikanae, the environmental damage that was done to waterways, and other claim issues. The claimants also took the Tribunal to view Paraparaumu Airport. They claimed that the Crown unjustly failed to return land that was no longer needed for airport purposes.

The third hearing will be held in February 2019. The Tribunal will then hear the claims of Ngāti Raukawa, Ngāti Kauwhata, and affiliated groups. □

The mouth of the Waikanae River: the Tribunal heard evidence about the ownership and modification of the river and damage to the habitat



Tribunal Considers Landlocked Land

THE Waitangi Tribunal has released its preliminary views concerning landlocked Māori land in the Taihape inquiry district. The Taihape Tribunal panel comprises Judge Layne Harvey, Professor Pou Temara, Dr Angela Ballara, the Honourable Sir Doug Kidd, and Dr Monty Soutar.

For the purposes of the inquiry, the Tribunal defined landlocked Māori lands as those lands in Māori title that have no legal or formed road or easement to them. This means that Māori owners have to trespass over private property, unless the adjacent owners give them permission. In turn, the adjacent owners have the legal right to block them from crossing their property. In effect, the Māori owners of the affected lands have no reasonable or, often, legal means of accessing their lands.

The Tribunal acknowledged that the inquiry was still in its hearing phase and that not all evidence on the topic had been heard. However, it was satisfied that there were significant and compelling issues that needed to be addressed in advance of its full report. It pointed out that approximately 73 per cent of the remaining Māori land in the district was without reasonable access. The Tribunal also aimed to release its preliminary views in time to contribute to the Crown's current review of the Te Ture Whenua Māori Act, which, amongst other issues, is looking at ways to improve the existing legislation on landlocked Māori land.

The Tribunal said that the evidence suggested that much of this land had become landlocked through the land title processes that the Crown introduced to the district in the nineteenth century. Under the relevant laws of the time, land could be purchased, partitioned, and subdivided without ensuring that there was still legal access to the remaining Māori lands. The Native



Members of the Taihape Tribunal at Rātā Marae during hearing week 8 in September 2018: (l to r) the Hon Sir Doug Kidd, Professor Pou Temara, Judge Layne Harvey, Dr Monty Soutar, Dr Angela Ballara

Land Court had also been able to partition Māori land without ordering proper legal access routes to all the relevant blocks of land. This left many Māori landowners without legal access to their lands.

The evidence suggested, the Tribunal said, that in the decades since then an apparent Crown “indifference” to the problem, or an unwillingness to provide effective solutions, had allowed the situation to continue. This had had profound consequences for the Māori landowners. The lack of legal access meant that the lands could not be used in the economy. At times, owners were compelled to sell their landlocked lands as a result. Some were also unable to carry out their customary activities – such as their duties as kaitiaki – on their ancestral lands.

The Tribunal stated that it was not able to make findings and recommendations without having heard all the evidence. However, it made some

suggestions in consideration of the review of the Te Ture Whenua Act. These included establishing a contestable fund to pay the costs of creating access and reconsidering the definition of “reasonable access” in the relevant law. The Tribunal also suggested ensuring that, where appropriate, access to land by vehicle was provided, not just walking tracks.

The Tribunal also signalled its intention to release a priority report on the issue of landlocked Māori land after all the evidence had been heard. □

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Stage 2 Water Hearings Completed

THE Tribunal has completed its hearings in stage 2 of the National Freshwater and Geothermal Resources Inquiry. The Tribunal panel comprises Chief Judge Wilson Isaac, Professor Pou Temara, Ron Crosby, Dr Robyn Anderson, and Dr Grant Phillipson.

Stage 1, concerning the question of ownership and the Treaty guarantees in 1840, was granted urgency in 2012. The Tribunal's report was released the same year (see issue 65).

Stage 2 concerns the question of whether the present laws about fresh water are consistent with the Treaty. It also covers the Crown's programme of water management reforms. The main focus is on the reforms carried out so far from 2009 to 2017.

In 2012, the Crown gave assurances to the Supreme Court (in the *Mighty River Power* case) that it would address Māori rights and interests in fresh water. Since then, the Crown has worked with iwi leaders to develop a series of reform proposals. The Crown also worked with the Land and Water Forum, with members from iwi, environmental organisations, farming organisations, power companies, and others. The Tribunal adjourned its inquiry for a period so that the Crown and iwi leaders could co-design reforms and consult the country (including all Māori) about them.

In 2014–17, the Crown gave direction for water management through a national policy statement and made other changes through Resource Management Act (RMA) reforms. In particular, in 2017 the Crown introduced new iwi participation agreements called “Mana Whakahono a Rohe arrangements”. Iwi will invite councils to make an agreement as to how they will work together on RMA matters. Iwi leaders hoped that this would result in co-management and co-governance agreements. Also, the



Paul Hamer

Porotī Springs in Northland is one of the case examples in stage 2 of the water inquiry

national policy statement requires councils, iwi, and communities to agree on how to limit discharges and how to maintain or improve the health of their waterways.

Three hearings of claimant, interested party, and Crown evidence were held in November 2016, June 2017, and August 2018. The lawyers presented closing arguments in a final hearing at the end of November 2018.

The evidence of the claimants and interested parties has focused on what they say is a crisis in water quality and its management. They pointed to the degradation of taonga such as Lake Horowhenua, Lake Omapere, and the Rangitikei River, which are heavily polluted. Claimant expert Mike Joy gave evidence that there has been a serious decline in water quality since the RMA was introduced in 1991. At that time, 20 per cent of native fish species were threatened with extinction, but Crown and claimant evidence agreed that the figure has now risen to 75 per cent. Increased nitrogen from farming and other sources, as well as phosphorus from sediment, is causing serious water quality problems. Some rivers and lakes are in a very poor state.

The claimants also argued that their role in RMA decisions is too weak

and underfunded, with the result that they cannot be effective as kaitiaki in addressing such problems. They seek further reforms, including the establishment of a national water commission to set freshwater policy and to resolve the question of Māori rights in water.

Ministry for the Environment officials agreed that a serious decline had occurred in the water quality of some waterways and that more reforms were needed to address Māori rights and interests in fresh water. The Crown also argued that its reforms to date would result in improvements to both water quality and Māori participation in water management. More water reforms are planned by the Government in 2019–20.

Both sides agreed that the Crown has not yet tackled the issue of allocation. Presently, a first-in, first-served system for water consents has shut Māori out and has resulted in catchments that are fully or over allocated. Although the problem has been acknowledged by both the Crown and Māori, the claimants were very critical of the Crown's failure to act on it.

The Tribunal will now consider all the evidence and submissions and will produce a stage 2 report in 2019. □

Health Inquiry Hearings Start

THE first stage of the Health Services and Outcomes Inquiry (Wai 2575), which focuses on the policy and legislation underpinning the primary healthcare system, is well underway. The first three weeks of hearings were held at Tūrangawaewae Marae from 15 October to 2 November 2018. That these hearings occurred on the centenary of the Spanish flu pandemic weighed heavily on the minds of those in attendance. This health crisis, which so profoundly impacted Waikato Māori, prompted Te Paea Herangi to later choose Tūrangawaewae as the site for a Māori-run hospital.

Overall, the desire for health services designed by Māori, for Māori, dominated proceedings. A rousing performance by students from Te Wharekura o Rākaumangamanga further reminded attendees of the legacy of the kōhanga reo and kura kaupapa movements and the significant gains to be had from allowing space for Māori-designed solutions in the social sector.

The first week was dedicated to hearing evidence from the two claimant groups, who are for the most part associated with various Māori-run primary health organisations, or PHOs. Broadly, PHOs are responsible for delivering primary care services to their enrolled populations, through either their own services or the services of smaller, contracted health providers. The Wai 1315 claimants are a group of health professionals associated with Māori-run PHOs and health providers. The Wai 2687 claimants are the National Hauora Coalition, a coalition of Māori health service providers that jointly operate as a PHO.

The claimants called witnesses from up and down the country to present a wide range of evidence, from high-level analyses of funding and health policy development to the experiences



Students from Te Wharekura o Rākaumangamanga perform during a break in proceedings

of practitioners working directly with high-needs Māori patients. Witnesses were also called from the United States. Dr Katherine Gottlieb presented an overview of the Nuka model of care, an Alaskan health system designed and run by indigenous communities. Amy Downs presented her Fulbright-funded research on the nature of the population-based funding model used in Aotearoa's health system.

The second week began with the evidence of Māori interested parties, who provided broader context to the evidence of the two main claims heard in the first week. Witnesses included primary care nurses, mental health workers, and health policy consultants.

Crown witnesses were heard over the course of four days in the second and third weeks. Dr Ashley Bloomfield, the newly appointed director-general of the Ministry of Health, described the current primary healthcare system's structure and function and presented his vision for the direction of the ministry under his watch. Crown witnesses presented further details of the structure of the system, the history of

healthcare in Aotearoa since colonisation, and the experiences of tackling Māori health issues from the perspective of district health boards.

The final days of the stage 1 hearings, which completed the hearing of Crown witnesses, were held in December at the Tribunal Unit's offices in Wellington. Closing submissions will be heard in March 2019.

The second stage of the inquiry will focus on three priority areas: Māori mental health, Māori with disabilities, and Māori health issues arising from alcohol, tobacco, and substance abuse. The Tribunal has commissioned research on these issues. Drafts of these reports will be distributed to parties involved in the inquiry on 30 April 2019, with the final reports due to be filed by 28 June 2019.

Additionally, the Crown is preparing three pieces of research to support the hearing of stage 2 issues: a report on Māori health trends from 1990 to 2015; a Māori disability statistical status report; and a historical overview covering 1840 to 1992. These Crown reports are expected to be received by 12 July 2019. □