

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 74



Waitangi Tribunal

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Te Rohe Pōtae Report Pt 3



The late Judge David Ambler and Professor Pou Temara confer during a site visit at Kāwhia Harbour in the third Te Rohe Pōtae hearing on 4–8 March 2013

IN this issue, we feature the release of part 3 of the Tribunal's report on its Te Rohe Pōtae district inquiry. These chapters consider the Crown's role in the alienation, administration, and development of Māori land in the twentieth century.

We outline the Tribunal's revised kaupapa inquiry programme, updated in a memorandum of 27 March 2019 from the chairperson to all claimants and the Crown. The memorandum marks a change in focus to contemporary claim issues and sets out ways in which they may be prioritised for hearing. It also

explains how claimants with specific or local claims may participate in kaupapa inquiries into nationally significant issues to which their claims relate. Alongside district and urgent inquiries, kaupapa inquiries have become a core feature of the Tribunal's inquiry programme over the last 18 months, which is summarised in an overview report on progress.

We also pay tribute to Professor Wharehuia Milroy, for more than 20 years a prominent member of the Tribunal, who passed away in May of this year. □

From the Chairperson

KIA piri tonu mai, he putiputi pai katohia' – te putiputi rerehua o te Tairāwhiti, te whakawhitinga o te rā, e te kōkā e Kahurangi June Te Rina Mead ka tangi tonu mōu. Ka mau tonu te piata o tō mene, mō ake. He tipua, he tangata! He whare wānanga, he whare kōrero! Te aumangea o te reo, e te pāpā e Ahorangi James Te Wharehuia Milroy ka tangi tonu mōu. Ka mau tonu te tīrama o ō karu, mō ake. I piata, i tīrama kōrua ki te ao, ā, ka piata, ka tīrama kōrua ki te pō, mō ake. Koutou katoa ngā mate haere, haere, okioki.

Five years ago, on 2 July 2014, I launched the Waitangi Tribunal's *Strategic Direction 2014–2025*, outlining how the Tribunal aimed to address the great majority of the claims that remained before it. A new kaupapa inquiry programme, subsequently set out in my memorandum of 1 April 2015, would hear claims relating to nationally significant issues alleged to affect Māori as a whole in similar ways.

At that time, the expectation was that historical (pre-1992) claims would feature prominently, as well as high-priority contemporary issues. That expectation has been fulfilled in the inquiry into the claims of Māori military veterans and their whānau,



the first kaupapa inquiry to start. Elsewhere, however, claimants have tended to give priority to a hearing of their contemporary grievances, especially those concerning current Crown policies and actions.

The practical implications of this change in focus are addressed in my memorandum of 27 March 2019 updating the kaupapa inquiry programme, which is outlined in this issue (see page 11). Two main developments nevertheless constrain the Tribunal's ability to progress its kaupapa inquiries. One is the large number of urgent and remedies inquiries – currently,

nine are under action. The district inquiries, focusing mainly on historical claims, have also taken longer to complete than anticipated in 2014. They now include a new inquiry in the North-eastern Bay of Plenty district, granted in June this year in response to applications for a hearing of Whakatōhea's historical claims.

The district, remedies, and many urgent inquiries are concerned mainly with historical claims or the process for settling those claims with the Crown. They therefore remain the Tribunal's top priorities and continue to generate a heavy workload. This has put pressure on the Tribunal's membership and resources. The Tribunal will nonetheless attempt to sustain the kaupapa inquiry programme, focusing in particular on claims that raise pressing current issues of national significance.

Ka hoki au ki te whakatauki, 'mā pango, mā whero, ka ora ai te iwi'.

Ngā mihi ki a koutou, nā

Chief Judge Wilson Isaac
Chairperson



From the Acting Director

TĒNĀ KOUTOU.

It is a real pleasure to write this article as the newly appointed acting joint director of the Waitangi Tribunal Unit and the Māori Land Court. I have the privilege of covering these roles while the permanent director, Grace Smit, is seconded to lead the Te Ture Whenua Māori reform programme within the Māori Land Court.

I am a senior leader from within the Ministry of Justice with experience across other courts and tribunals. I have a keen (and personal) interest in the significance and legacy of both the Tribunal and the Māori Land Court for Aotearoa / New Zealand and, more importantly, for Māori and future generations to come.

I am only three months into the

role and already have had the opportunity to see first-hand how much work goes on behind the scenes, and how unique the Tribunal process is, when I attended Tribunal hearings in Wellington.

As I have met staff across the unit, I have likewise been impressed with their commitment to their work supporting the Tribunal and their ability



On 2–3 April 2019, members of the Waitangi Tribunal convened at the James Cook Hotel, Wellington, for their annual members' conference. From the left: back row – Dr Ruakere Hond, Judge Terena Wara, Dr Grant Phillipson, Judge Layne Harvey, Ron Crosby, Tim Castle, and Tania Simpson; middle row – Judge Stephen Clark, John Baird, Prue Kapua, Judge Michael Doogan, Dr Robyn Anderson, Dr Monty Soutar, and Judge Damian Stone; front row – Dr Ann Parsonson, Judge Carrie Wainwright, Dr Tom Roa, Chief Judge Wilson Isaac (chairperson), Judge Patrick Savage (deputy chairperson), Professor Pou Temara, Judge Sarah Reeves, and the Honourable Sir Douglas Kidd.

to deliver and remain flexible in what is a very dynamic environment.

Our work at the Tribunal is more diverse than ever before, with the concurrent strands of district, kaupapa, remedies, and urgent inquiries. This is reflected in our recent recruitment of staff from an assortment of backgrounds and in our recently developed inquiry programme for 2019–20.

My focus over the next few months will be to continue to support the unit in our shift towards the kaupapa work programme and in covering the urgencies we currently face, while also working to progress and complete the district inquiries.



We will continue to strengthen the technical training we have embedded across the unit over the past several

months, as well as look at how we can continue to lift our cultural capacity and competency in terms of tikanga and te reo.

I am planning to attend different Tribunal hearings over the coming months to learn more about the important work we support. I hope to update you on these visits in the next edition of *Te Manutukutuku*.

He mihi nui.

Renee Smith
Ngāti Porou, Ngāti Kahungunu



Ahorangi Te Wharehuia Milroy

Nō te 7 o Haratua, i hinga ai a Te Wharehuia Milroy. He kirikawa ki te kupu, he poutāhū nō Te Rōpū Whakamana i te Tiriti o Waitangi (Rōpū Whakamana) mō ngā tau e maha. Nāna i taki te kerēme a Tūhoe i te tau 1987, i muri tonu mai i whānuitanga atu o te mana o Te Rōpū Whakamana ki te whakawā i ngā kerēme ki te tau 1840. Nā rāua ko Tama Nikora i kōkiri te kerēme a Tūhoe ki te Te Rōpū Whakamana i raro i Te Poari Kaitiaki Māori o Tūhoe. I a ia e noho kaitiaki ana mō Te Kōhanga Reo, ka whai kupu ia ki te Rōpū Whakamana i te tau 2012 i raro i take whawhati tata a te Poari Kaitiaki o Te Kōhanga Reo.

I tū ia hei mema mō te Rōpū Whakamana i te Tiriti o Waitangi i te tau 1998. Mō ngā 20 tau i muri mai, i runga ia i ngā uiui e whā i Te Ika a Māui (arā, Tūranganui-ā-Kiwa, Hauraki, Wairarapa ki Tararua me Whanganui Whenua). Neke atu i te 60 ōna nōhanga i ngā tekau tau. Āpiti atu, i noho ia ki runga i ngā kerēme whawhati tata, ka whai wāhi ki ngā pūrongo mō Ngāti Maniapoto / Ngāti Tama Whakatau Kerēme Tuki Atu, Tuki Mai (2001), Te Rāhui Moana o Hauraki (2001), te Ngāhere o Tarawera (2003), me Tāmaki Makaurau (2007). Inātata nei, i runga ia i te uiui o te Ngāhere o Mangatū e whiriwhiri nei i ngā tono rongoā a ngā kaikerēme i te rohe uiui o Tūranga.

I puta whānui te rongo o Ahorangi Milroy mō tōna tohungatanga ki te ārahi i ngā kaupapa mātauranga e pā ana ki te whakaora i te reo me ngā tikanga Māori, ā, ka āpiti toru atu ki a Ahorangi Pou Temara rāua ko Tā Tīmoti Kāretu ki te whakaara i Te Panekiretanga o te Reo Māori. I ngā Tuku Tohu o te Tau Hōu ā te Kuini ka whakawahia ia ki te Tohu Hiranga o Aotearoa mō āna mahi whakaora i te reo Māori. Mō ōna pūmahara me tōna makere ki te toha i ōna mōhio, ka tau te



Professor Te Wharehuia Milroy at the Creative New Zealand Te Waka Toi Awards, 2009

kauanuanu a te tokomaha i mahi tahi me ia i te Rōpū Whakamana i te Tiriti o Waitangi. Ka tangi te ngākau mōna.

PROFESSOR Te Wharehuia Milroy, who passed away on 7 May 2019, was a champion of te reo Māori and for many years a pillar of the Waitangi Tribunal's inquiry programme. He was the lead claimant in the anchor Tūhoe lands claim (Wai 36), which he submitted in March 1987, little over a year after the Tribunal's jurisdiction was extended to cover historical claims back to 1840. Together with Tama Nikora, he brought the claim before the Tribunal's Te Urewera district inquiry on behalf of Ngāi Tūhoe and the Tūhoe-Waikaremoana Māori Trust Board. As a trustee of Te Kōhanga Reo National Trust, he also gave evidence in 2012 to the Tribunal's urgent inquiry into the trust's claim.

Professor Milroy was made a member of the Tribunal in February 1998. Over the next two decades, he served on four inquiries across the North Island (Tūranganui-a-Kiwa/Gisborne, Hauraki, Wairarapa ki Tararua, and Whanganui Land). Between them, he

sat on more than 60 hearings in just over a decade. He served on a number of inquiries into claims granted urgent or priority status, contributing to reports on Ngāti Maniapoto / Ngāti Tama Settlement Cross-Claims (2001), the Hauraki Gulf Marine Park (2001), Tarawera Forest (2003), and Tamaki Makaurau (2007). Until recently, he also sat on the Mangatū Forest inquiry, which is considering applications for remedies from claimants in the Gisborne district inquiry.

Professor Milroy gained a national reputation for his academic and leadership role in revitalising te reo and tikanga Māori, amongst other achievements joining with Professor Pou Temara and Sir Tīmoti Kāretu in 2004 to found Te Panekiretanga o te Reo Māori, the Institute of Excellence in the Māori Language. In the 2012 New Year's honours, he was made a Companion of the New Zealand Order of Merit for his services to the Māori language. His wisdom and his generosity in sharing his knowledge were greatly respected by all who worked with him at the Tribunal, and he will be greatly missed. □

Staff Profiles

Lawrence Patchett

I te taha o tōku matua, nō Kōtirana, nō Ingarangi ōku tūpuna. I te taha o tōku whaea, nō Airani, nō ngā moutere o Shetland ōku tūpuna. I tipu ake au i raro i te marumaru o te pae maunga o Te Tiritiri-o-te-Moana. He tangata Pākehā ahau. Kei Paraparaumu māua ko tōku hoa wahine e noho ana. Tokorua ā māua tamāhine. Ko Te Ati Awa, ko Ngāti Tūwharetoa, ko Ngāti Rangatahi ngā iwi o āku tamariki me tōku wahine. Tēnā koutou katoa.

Lawrence joined the Waitangi Tribunal Unit's report-writing team in 2016. Since then, he has provided report-writing assistance on the Ngāti Wai Mandate and Te Rohe Pōtae reports. He is now part of the team supporting the Taihape district inquiry and has attended eight hearings in this capacity. Having researched and written on history during his university studies, he feels greatly privileged to have worked on these inquiries.

Learning te reo Māori is a passion for Lawrence, and he values the many opportunities to further this interest

Researcher / Analyst Lawrence Patchett



at the Tribunal unit. He is grateful to his many kaiako but especially to Te Ataarangi tutor Purere Winterburn and Te Hiko Akuhata of Te Wānanga o Aotearoa.

Outside of work, Lawrence is a writer and editor of fiction and non-fiction. His books tend to explore questions of history and Pākehā identity. As part of his work towards his third book, he will be on leave for six months to take up an Ursula Bethell Writer's Residency at the University of Canterbury, during which time he will research and write on the involvement of his ancestors in the Wairau Affray in 1843. He hopes that this project will broaden and extend his research and writing skills in ways that will benefit his work at the unit.

Nicola Kiri Smith

Nicola Kiri Smith (Ngāti Maniapoto, Waikato, Ngāti Apakura, Taranaki Tūturu) recently joined the unit as principal facilitator in the inquiry facilitation team, which provides evidential analysis, procedural, and inquiry planning support to presiding officers and their panels.

Nicola grew up in Taranaki and was one of the founding students of the kōhanga reo in Ōpūnake. After graduating university, she began work at the Waikato–Maniapoto Māori Land Court in Hamilton. During that time, Nicola became passionate about the work of the Tribunal and soon moved to Wellington to take up a position in the claims coordination team from 2007 to 2008.

Following this, Nicola worked as a repatriation researcher at Te Papa, assisting with facilitating the return of Māori and Moriori human remains to their descendant communities. Nicola then returned to the Treaty sector and



Principal Facilitator Nicola Kiri Smith

has worked for the past eight years at the Crown Forestry Rental Trust as a research facilitator and then as a funding and contracts manager. She was very involved with the Whanganui Lands, Te Rohe Pōtae, and Porirua ki Manawatū inquiries in that capacity.

For Nicola, returning to the unit was a great opportunity to share the skills and experience she gained over the years and to apply these to her new role. As principal facilitator, she will be providing senior technical leadership to the facilitation team and will work closely with other leaders across the unit to ensure all inquiries are serviced to a high standard. □

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Kaupapa Inquiry Programme Updated

THE kaupapa inquiry programme is designed to provide a pathway for the hearing of nationally significant claim issues that affect all Māori or a section of Māori in similar ways. On 27 March 2019, the chairperson issued a memorandum to all claimants and the Crown. This amended and updated the Tribunal's kaupapa inquiry programme, which had originally been set out in his memorandum of 1 April 2015. Both memoranda can be found on the Tribunal's website.

So far, five kaupapa inquiries have begun hearings or are in preparation (see page 11 in this issue). The Tribunal's experience to date in these inquiries has been that most participating claimants, as well as the Crown, have emphasised the contemporary elements of their claims. Some have asked that those more recent matters be heard ahead of historical grievances and that the Tribunal give priority to hearing and reporting on claims about current Crown policy and practice.

The updated order of future inquiries (see the table opposite) gives due weight to this emerging priority. The next inquiry due to start will address claim issues concerning the constitution, self-government, and the electoral system. This inquiry was deferred until hearings and closing arguments had concluded in stage 2 of the Te Paparahi o te Raki (Northland) inquiry, in which claims about constitutional issues are prominent. The three kaupapa inquiries that follow will cover claims in relation to broad social and economic topics – education services and outcomes, social services and social development, and economic development. Together with the health sector inquiry now under way and the housing inquiry in preparation, these inquiries will hear claims alleging Treaty breach in many of the

modern areas of State service provision and equity of outcomes for Māori.

The latest memorandum enables pressing contemporary issues to be prioritised for rapid inquiry, where early reporting would make a significant contribution towards alleviating prejudice and strengthening the Crown–Māori Treaty partnership. The greater weight given to the immediacy of the take (issue) or potential remedy will require a flexible approach to reordering the inquiry programme should claimant and Crown priorities change.

Flexibility may also be appropriate in setting an inquiry's scope and process. The kaupapa inquiry programme is organised into broad topics covering Treaty issues of national significance raised by claimants. Should the Tribunal agree with a claimant or Crown proposal to give a particular issue priority, there may be an earlier targeted inquiry. An example is the MACA inquiry into the legislation and current process for recognising Māori customary rights to the foreshore and seabed (see page 11). Alternatively, the issue may be addressed in the first stage of a larger inquiry, as primary healthcare has been in the Health Services and Outcomes inquiry.

Priority may be given where there is substantial claimant support and readiness for early hearing and reporting, provided that doing so would remain relevant alongside any policy development or inquiry process already under way (such as the recent Government inquiry into mental health). Because the Tribunal's resources are heavily committed to urgent and district inquiries, its ability to start new kaupapa inquiries is still limited. Claimant readiness to proceed remains an important factor in starting any new, targeted inquiries into pressing contemporary issues.

To help shorten the time required to prepare for the start of a kaupapa inquiry, the memorandum outlines two preliminary steps that may be taken:

- ▶ In the first, the Tribunal would consult affected claimants on their intention to participate and on issues they consider should be prioritised for inquiry.
- ▶ In the second, the Tribunal would commission an exploratory scoping report to provide an outline of claims likely to fall within the scope of the inquiry, the kaupapa issues they raise, and any connections with current Crown policy and practice. It would also describe current research and sources.

The memorandum clarifies the Tribunal's approach to specific or local claims that relate to the kaupapa issues of national significance. The issues for a kaupapa inquiry must normally satisfy a three-part threshold test – national significance, Māori widely affected, and similarity of experience. Each part may be achieved by one or more national claims or by a group of claims about the same issue taken together. Once the threshold test has been met, any claim that relates to the issues, including specific or local claims brought on behalf of individuals, whānau, hapū, and other groups, may be admitted to the kaupapa inquiry. In other words, these kinds of claims are not required to meet the threshold individually. Instead, they play an important role in providing local context, case examples, and representative Māori experience of the national issues under examination. At the same time, the memorandum confirms that the inquiry's focus will be on the shared Māori experience of the kaupapa issue or issues concerned. □

Kaupapa Inquiry Programme

No	Inquiry	Indicative issues in registered claims
Inquiries under way or in preparation		
1	Māori military veterans (Wai 2500)	Discrimination, treatment, rehabilitation, farm settlement
2	Health services and outcomes (Wai 2575)	Stage 1: Primary healthcare system Stage 2: Priority issues – mental health; disabilities; alcohol, tobacco, and substance abuse Stage 3: Other issues
3	Marine and Coastal Area (Takutai Moana) Act (Wai 2660)	Stage 1: Process issues – High Court and Crown engagement processes for the recognition of Māori rights Stage 2: Legislation, policy and practice
4	Mana wāhine (Wai 2700)	Discrimination against women, gender status, services for women, refuges
5	Housing policy and services (Wai 2750)	Adequacy of urban and rural housing provision, State housing
Future inquiries		
6	Constitution, self-government and electoral system	Constitutional law, sovereignty; provision for the exercise of Māori self-government Electoral regime, national political representation Representation in local and specialised bodies
7	Education services and outcomes	Primary and secondary schools, tertiary education, curricula, education finance Kura kaupapa and wānanga
8	Social services and social development	Processes of impoverishment, urbanisation policy and impacts Welfare provision, social development Child protection, family well-being
9	Economic development	Carbon taxation, emissions trading scheme, impact on Māori forestry Taxation: rates, rating, land valuation, land tax, death duties, control of taxation and revenue Māori economic development institutions and law
10	Identity and culture	Adoption, guardianship, wards, whāngai; custody and access control Coronial law and practices, burials; genetic modification Mokomokai, artefacts, heritage, museum collections, archives, monuments, films, audiovisual works
11	Natural resources and environmental management	Minerals (surface, underground, offshore); atmospheric resources Regulation of fishing, water quality, pollution; marine reserves, customary fishing, whales, dolphins, impact of pollution and commercial overfishing on customary resources
12	Justice system	Criminal justice system, corrections Legal aid, barriers to accessing courts, colonial justice system, Supreme Court, Privy Council Māori land law, succession, court procedure and costs
13	Citizenship rights and equality	Human rights, racial discrimination

Te Mana Whatu Ahuru Part 3

ON 4 June 2019, the Tribunal released the pre-publication version of part 3 of *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*. In parts 1 and 2, released in September 2018 (see issue 73), the Tribunal found that, between 1883 and 1885, Te Rohe Pōtae rangatira and the Crown made a series of agreements known as Te Ōhākī Tapu (the sacred compact). In exchange for opening the region – effectively sealed for two decades following war and raupatu in the 1860s – to the North Island main trunk railway, Te Rohe Pōtae rangatira expected the Crown to actively protect their mana whakahaere, or authority over their communities, lands, and affairs. Te Ōhākī Tapu and its impacts, including the arrival of the Native Land Court and the railway in the district, anchored parts 1 and 2.

Part 3 explores the legacies of Te Ōhākī Tapu with a longer lens, addressing the land policy and legislation the Crown imposed in Te Rohe Pōtae after 1900. The Tribunal found that, contrary to its promises to protect Māori control over land and affairs, during the twentieth century the Crown mainly pursued a policy of making Māori land in the district available for Pākehā settlement. During the period 1900 to the 1970s, a range of statutes, mechanisms, and practices either enabled land to be removed from Māori ownership, or prevented owners from using it as they wished. Major channels of land dispossession included the establishment of Māori land councils and land boards and the compulsory vesting of lands in these boards for lease and administration, the creation of ‘native townships’ (which were actually a tool to get land for European settlement), and the compulsory consolidation or purchase of interests in Māori land. The result was a stark transition in land

ownership. In 1905, Te Rohe Pōtae Māori retained 1,142,196 acres – 59 per cent of the original inquiry district. By 1966, the tribal estate had shrunk to 342,722 acres (138,695 hectares), or 18 per cent of the district.

The Tribunal found that the Crown through its actions (including the twentieth-century land laws) breached the Treaty on numerous occasions. The Tribunal further found that the cumulative impact of the Crown’s Treaty breaches in the areas of land title, tenure, transfer, and development in the district resulted in a loss of tino rangatiratanga (full control and authority) over Te Rohe Pōtae lands. It also resulted in a breakdown in social and political relationships and in enormous social, economic, and cultural prejudice, the impacts of which continue to this day.

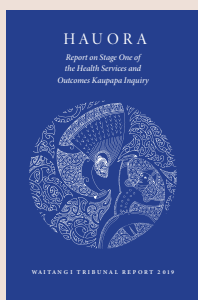
This prejudice, the Tribunal found, was on clear display in the evidence before it. Due in significant degree to the Crown’s land policies detailed in part 3 of the report, by the mid-to-late twentieth century, Te Rohe Pōtae Māori had been parted from much of their ancestral land. The claimants reported suffering long-term cultural impacts of land loss, including a decline in traditional ways of living, food gathering, and social organisation. The impacts of these developments on Māori health, socio-economic status, and wellbeing will be

addressed in a forthcoming volume of the report.

The Tribunal made one recommendation in part 3. This was based on its findings that Te Rohe Pōtae Māori had been prejudiced by land loss, caused by Crown acts and omissions in breach of the Crown’s duty of active protection. That duty, the Tribunal found, had applied to the protection of the rangatiratanga and mana whakahaere contained in the Treaty and Te Ōhākī Tapu. It recommended that, during Treaty settlement negotiations, the Crown discuss with Te Rohe Pōtae Māori, or their mandated settling group(s), possible legislation to enable Te Rohe Pōtae iwi and hapū to administer their lands, either alongside the Māori Land Court and Te Tumu Paeroa (the Māori Trustee) or as separate entities. This should involve thorough consultation with Māori landowners and should not have any coercive or compulsory elements.

Part 4 of the report, to be released later in the year, will address local government, Māori political autonomy, and environmental issues in Te Rohe Pōtae.

The panel comprises Deputy Chief Judge Caren Fox, Sir Hirini Moko Mead, Professor Pou Temara, Dr Aroha Harris, and John Baird. Deputy Chief Judge Fox was appointed presiding officer after the death of Judge David Ambler in 2017. □



The Hauora report is now available from Legislation Direct

Email orders to:

ldorders@legislationdirect.co.nz

Inquiry Programme Overview

SINCE late 2017, the Tribunal has seen an expansion in activity across all areas of its inquiry programme as it works towards completing the great majority of claims by the mid-2020s. During this period, the Tribunal has released three reports and advanced the writing of six more; held hearings in two district and three kaupapa inquiries; conducted seven urgent and three urgent remedies inquiries; and started a standing panel process for the remaining historical claims. In all, 21 inquiries involving hundreds of claims are currently active.

Urgencies, remedies

The number of applications for urgency peaked in 2017 and has since decreased. The reduction was mainly in claims challenging Crown Treaty negotiation processes or the terms of Treaty settlements. By contrast, applications relating to current issues of Crown policy and practice have shown a rising trend. Overall, the number of applications on hand dropped from 35 claims in January 2018 to 22 claims in June 2019.

Of the four urgent and two urgent remedies inquiries already under way in January 2018, all except one remained active in June 2019. With the four new urgent inquiries granted during the period, by June 2019 the total had risen to nine, most of them arising from applications submitted in 2017 or earlier.

Five of the inquiries relate to the Crown's engagement with iwi or hapū groups to settle Treaty claims:

- ▶ The **Whakatōhea Mandate** inquiry report was released in April 2018 (see issue 72).
- ▶ The **Hauraki Overlapping Claims** inquiry, granted in December 2018, completed its hearings and closing

submissions in the first half of 2019 and its report is in preparation.

- ▶ The **Maniapoto Mandate** inquiry, also granted in November 2018, is currently in hearing.
- ▶ Following mediation in 2018, which resolved the claims of two of the three claimant hapū, the **Ahuriri Hapū** Tribunal held a hearing in February 2018 and is writing its report.
- ▶ Hearings in the inquiry into the **Ngā Hapū o te Moutere o Motiti** claim started in May 2018 and are scheduled to conclude in July 2019.

Two ongoing inquiries concern issues of national policy alleged to prejudice Māori:

- ▶ The **Trans-Pacific Partnership Agreement** Tribunal released its first report in 2016. The Tribunal initiated a second stage of its inquiry into outstanding issues following the enactment in November 2018 of the revised Comprehensive and Progressive Agreement for Trans-Pacific Partnership.
- ▶ The inquiry into **Māori Prisoners' Voting Rights** held a hearing in May 2019, and its report was released in pre-publication format in August 2019.

Three applications for remedies have been before the Tribunal (see the map on page 12), two of them for the second time after the Tribunal's reports were quashed in the courts on legal grounds. They arise from well-founded claims that were reported on in previously completed district inquiries:

- ▶ Following the recusal in mid-2018 of the **Ngāti Kahu Remedies** presiding officer and panel, the chairperson appointed a new panel to conduct the remedies inquiry. The applicants' claims were adjudged well-founded in the Muriwhenua Land inquiry, which reported

back in 1997, since when most iwi in the district have negotiated Treaty settlements with the Crown. Proceedings were suspended due to a High Court review but have recently resumed.

- ▶ The **Mangatū Remedies** inquiry is considering claims for the return of Crown forest land inland from Gisborne. The Tribunal held hearings from August to December 2018 and is writing its report in parallel with a series of conferences to get the parties' views on additional matters.
- ▶ Applications from a number of **Wairarapa ki Tararua** claimants were granted urgency in 2018. The Tribunal is conducting two sets of hearings on requests for binding recommendations. One is on the return of former SOE land on the Pouākani 2 block, which the Crown vested in Wairarapa Moana Māori in 1916 and which includes the site of the Maraetai Hydro Power Station owned by Mercury Energy. The other is on the return of Crown forest land in the Ngāumu Forest east of Masterton. Hearings began in December 2018 and are scheduled to close in December 2019.

District inquiries

During this period, one district inquiry (Te Urewera) finished, one new inquiry (North-eastern Bay of Plenty) commenced, and four continued their proceedings. To date, the Tribunal has completed its reporting on 20 of its 37 inquiry districts nationwide, covering 81 per cent of New Zealand's land area. It is currently hearing and reporting on some 900 claims in five inquiries comprising a further 10 districts, covering 10 per cent of New Zealand's land area. In the seven districts not being heard

by the Tribunal, covering 9 per cent of New Zealand's land area, most iwi or hapū have signed Treaty settlements with the Crown or are negotiating to settle their claims without a Tribunal inquiry.

Since late 2017, the Tribunal has released reports on three district inquiries:

- ▶ **Te Urewera:** In December 2017, the Tribunal published its full report on the Te Urewera district inquiry. The report had previously been released in six pre-publication parts, starting in 2009.
- ▶ **Te Rohe Pōtae (King Country):** In September 2018, the Tribunal released in pre-publication format the first two parts of *Te Mana Whatu Ahuru*, its report on Te Rohe Pōtae claims, covering mostly nineteenth-century issues. Part 3, covering mainly twentieth-century issues, followed in June 2019 (see the article on page 8 and the article in issue 73).
- ▶ **Taihape:** In advance of preparing an early report on the issue of landlocked Māori-owned land, in August 2018 the Tribunal released its preliminary views to assist the review of Māori land legislation then under way.

Five district inquiries are under action:

- ▶ **Te Rohe Pōtae (King Country):** The Tribunal expects to release the next part of its report by late 2019 and the rest of the report in 2020.
- ▶ **Te Paparahi o te Raki (Northland):** Hearings in stage 2 of Te Raki, involving more than 400 claims and covering all post-1840 claim issues, concluded in October 2017. The filing of written closing submissions and replies was completed over the following year. The Tribunal is preparing its report.
- ▶ **Taihape:** Since the first hearing at Rātā Marae in March 2017, the Tribunal has held nine hearings of claimant and Crown evidence. The hearing of evidence is scheduled to



Stained glass window in St Luke's Church, Waikanae showing rangatira Wi Parata and Bishop Octavius Hadfield, who worked together on establishing the church in its present location. It featured in a site visit by the Porirua ki Manawatū Tribunal during their first hearing of Te Ati Awa / Ngāti Awa claims in August 2018.

finish in early 2020 and closing submissions in mid-2020.

- ▶ **Porirua ki Manawatū:** The Tribunal has organised the inquiry into three stages.

The first, into the claims of Muaūpoko, concluded for most claim issues with the release of the Tribunal's Horowhenua report in June 2017.

In the second, focusing on the claims of Te Āti Awa/Ngāti Awa ki Kāpiti, research commissioned by the Tribunal was undertaken during 2017 and 2018. The Tribunal held four hearings between August 2018 and June 2019. Following the final hearing of claimant and Crown evidence in August 2019, written closing submissions will be filed and the Tribunal will prepare its report on the claims.

In the third, the Tribunal will hear the claims of Ngāti Raukawa and affiliated groups, other claimants not yet heard, and issues affecting Māori across the district as a whole. Most research has been completed, and the final

Tribunal-commissioned reports were due to be filed by August 2019. Following a phase to finalise claims and issues and plan the hearing programme, the Tribunal expects to begin its hearings in early 2020.

- ▶ **North-eastern Bay of Plenty:** The Whakatōhea Mandate Tribunal recommended that all adult members of Whakatōhea be enabled to express their views on whether to proceed with historical Treaty settlement negotiations with the Crown or to have their claims heard by the Tribunal. A vote was held in October 2018. The results indicated widespread interest in holding a Tribunal inquiry.

In June 2019, the chairperson appointed a Tribunal panel to conduct a district inquiry into claims in the southern part of the north-eastern Bay of Plenty district. Te Whānau-ā-Apanui confirmed in late 2016 that they would not seek a Tribunal inquiry into their claims. The presiding officer held a judicial conference in August 2019 to start inquiry planning.

Kaupapa inquiries

Kaupapa inquiries hear claims that relate to significant national issues affecting most or all Māori. Since late 2017, four inquiries have been underway and two more have been in preliminary planning:

- ▶ **National Freshwater and Geothermal Resources:** The first stage of the inquiry proceeded under urgency. In stage 2, the Tribunal is focusing on the Crown's freshwater reform programme. Two final hearings were held in 2018 and the Tribunal is writing its report.
- ▶ **Māori Military Veterans:** The main body of new research produced for the inquiry was commissioned by the Tribunal. The last of the overview research reports was filed in August 2018, and the inquiry will enter its hearing phase next.
- ▶ **Health Services and Outcomes:** In December 2017, the Tribunal decided to organise its inquiry into stages, the first of which would focus on the primary health sector and hear two national claims that the claimants said were ready to proceed. Following proceedings to clarify issues for hearing and the participation of third parties, the Tribunal held four hearings between October and December 2018, commencing at Tūrangawaewae Marae. Their focus was on the legislative framework and funding process for primary healthcare. Closing submissions were heard in March 2019. The Tribunal released its stage 1 report in pre-publication format in June 2019 (to be covered in the next issue).

Meanwhile, in consultation with the parties the Tribunal planned and commissioned research for stage 2, which will consider three priority issues: Māori mental health; Māori and alcohol, tobacco, and substance abuse; and Māori with disabilities. Following completion of the commissioned research, due by August



The Health Services and Outcomes panel in front of Kimikimi Whare at Tūrangawaewae Marae, Ngāruawāhia, during their third hearing in November 2018. From the left: Associate Professor Tom Roa, Professor Linda Smith, Judge Stephen Clark, Tania Simpson, and Dr Angela Ballara.

2019, the Tribunal will prepare for hearings in 2020.

- ▶ **Marine and Coastal Area (Takutai Moana) Act:** In September 2017, the chairperson initiated a targeted kaupapa inquiry into claims about the Marine and Coastal Area (Takutai Moana) Act 2011. It includes the process used to address applications for Crown recognition of Māori customary rights in the coastal and marine area. The Tribunal decided to give priority to these process issues, and the first stage 1 hearing took place at Waiwhetu Marae in Lower Hutt in March 2019. Stage 2, focusing on the consistency of the legislation and Crown policy and practice with the Treaty, is planned to commence later this year.
- ▶ **Mana Wāhine and Housing Policy and Services:** In March 2018, the chairperson held judicial conferences to consult affected claimants and the Crown on starting two new kaupapa inquiries. One covers claim issues concerning Māori women and the other relates to housing policy and services. Since then, some preliminary matters have been dealt with in preparation

for the appointment of Tribunal panels to conduct the inquiries.

In March 2019, the chairperson issued a memorandum updating the order in which kaupapa inquiries are expected to proceed. Next to start will be an inquiry into claims concerning the constitution, self-government, and the electoral system (see page 7 in this issue).

Historical claims

During 2018, planning was completed on a standing panel process for claims with historical (pre-1992) grievances that fall outside the district inquiries or completed Treaty settlements or both. In September 2018, the chairperson began a standing panel inquiry into the claims that claimants may still want to bring before the Tribunal (some claims may have lapsed in the meantime). He appointed a standing panel in March 2019. This first regional inquiry covers the south-western North Island (Taranaki, Whanganui, Te Whanganui-a-Tara / Wellington), the South Island, and the Chatham Islands. □

Progress in Tribunal District Inquiries

As at July 2019

