

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 78



Waitangi Tribunal

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Covid-19 Response

As we go to press, the nationwide lockdown has moved to Level 3 in Auckland and Level 2 elsewhere. Scheduled Tribunal hearings and conferences are deferred under Level 4 and are restricted under Levels 2 and 3. The chairperson's alert level protocols are kept up to date and can be found at the Tribunal's website: www.waitangitribunal.govt.nz.



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Te Manutukutuku is produced and published by the Waitangi Tribunal Unit of the Ministry of Justice, and every effort has been made to ensure that it is true and correct at the date of publication.

Justice Inquiry Begins



The Supreme Court building, Wellington

THE Waitangi Tribunal's kaupapa inquiry into claims concerning the justice system has commenced with the appointment by the chairperson, Chief Judge Wilson Isaac, of Judge Carrie Wainwright as presiding officer. The inquiry will focus on claims concerning the administration of justice through the criminal and civil courts, law enforcement, and the corrections regime.

In other recent developments, the Tribunal has concluded its urgent inquiry into the uplifting of tamariki Māori by Oranga Tamariki Ministry for

Children. Through the second half of 2020, the claimants, experts, and officials presented evidence that was at times challenging for those who heard it. The Tribunal's report, released on 30 April – three months after the hearing of closing submissions – is featured in this issue.

Our regular report on the inquiry programme covers a year of high activity across district and kaupapa inquiries. We also welcome three new Tribunal members and pay tribute to three members and a former leading staff member who have recently passed away. □

From the Chairperson

THE Waitangi Tribunal's kaupapa inquiry programme, dealing with claim issues that affect all or most Māori nationally, has made substantial progress. Two years on from the launch of the Mana Wāhine and Housing Policy and Services inquiries, it is timely to begin the next kaupapa inquiry.

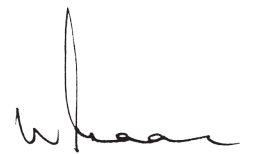
Two recent urgent inquiry reports – into Crown policy and action to reduce disproportionate Māori reoffending rates (2017) and Māori prisoners' right to vote (2019) – addressed specific claims about Māori in the corrections regime. Earlier urgent inquiries – into discrimination in offender assessment policies (2005) and the Crown's review of the Māori Community Development Act 1962, including Māori wardens (2014) – also

concerned particular aspects of the justice system. So, too, have a growing number of applications for urgency in recent years for claims concerning Māori held in prison on remand, the treatment of Māori prisoners, police armed response teams and the use of firearms and tasers, access to legal aid and resources for progressing Treaty-based claims and rights, and the confiscation of Māori land in multiple ownership under the Criminal Proceeds (Recovery) Act 2009.

Although many of the applications may not have met the Tribunal's high bar for granting urgency, they indicate a weight of claimant concern that is further expressed in claims about a wide range of justice issues. Their allegations extend to discrimination against Māori in all parts of the justice

system, the difficulties Māori face in access to justice in civil cases, police policies and practices, prison conditions, and other major justice system issues affecting Māori nationally.

Accordingly, I have issued a memorandum starting the Tribunal's inquiry into justice system claims, which has been sent to all claimants and been published on the Tribunal's website. The presiding officer and inquiry panel will determine any applications to prioritise claim issues that need early hearing.



Chief Judge Wilson Isaac
Chairperson



From the Director

ENGĀ MANA, e ngā reo, e ngā iwi e ngā hau e whā, tēnā ra koutou katoa. This is my first update on the work of the Waitangi Tribunal Unit since taking up the role of Pae Matua/Director Waitangi Tribunal and Māori Land Court in mid-June.

First, I want to acknowledge my predecessor, Grace Smit, who held the role of Director Waitangi Tribunal since mid-2016. Tēnei te mihi atu ki a Grace, nāu i arahi i tēnei waka i ngā tau nei, ā, e ora pai ana te Roopu Whakamana i āu mahi rangatira. Kia pai tōu haere ki te Puni Kōkiri.

Since starting in the role, I have met the team across the unit and have been impressed by the commitment they bring to their work to support

the Waitangi Tribunal. The Tribunal is a dynamic environment, and the team is demonstrating the flexibility and adaptability to deliver within this context.

It has been a busy time for the unit in the first half of 2021, where we saw the conclusion of an intern programme, in which three interns spent three months working in various parts of the Tribunal. This activity provides up-and-coming graduates with an insight into the work of the Tribunal. We also had one of our team assisting the Ministry of Education by participating in the school history programme panel.

We have a busy and diverse Tribunal inquiry programme ahead of us, and

in the last half of 2021 the Tribunal is looking to release a number of reports. A number of inquiries will also be in hearing over the next few months.

I have no doubt that our committed team will continue to provide strong support to the Tribunal. I look forward to providing you with an update in the next edition on how our work has progressed.



Steve Gunson
Pae Matua/Director
Waitangi Tribunal
Māori Land Court



Member News

SINCE our last edition, three new members have been appointed to the Tribunal, one member has been reappointed, and one member has won the Michael King Writer's Fellowship.

Dr Hana O'Regan

Dr Hana O'Regan (Kāi Tahu, Kāti Māmoe, Waitaha) has contributed significantly to Māori development, serving on various boards, review panels, and committees. A published author, composer, and graduate of Panekiretanga o te Reo Māori, Dr O'Regan is respected for her contribution to te reo Māori, focusing on Māori language revitalisation and Māori educational achievement, while also being an active advocate and driver for her own tribal language revitalisation strategy within Kāi Tahu.

Dr O'Regan has been Tumu Whakarae (CEO) of CORE Education, a learning-focused social enterprise, since September 2020. She was formerly the general manager of Oranga/Wellbeing for Te Rūnanga o Ngāi Tahu and a lecturer at the University of Otago, and she has held management

positions in the Māori Language Unit of Ngāi Tahu at the Christchurch Polytechnic Institute of Technology.

Dr O'Regan has also been a New Zealand Fellow on the International Centre for Language Revitalisation, a member of Ngā Kaituhono (NZQA), and a board member of the Māori Language Commission, Te Paepae Motuhake, and Endometriosis New Zealand.

Kevin Prime

Kevin Prime (Ngāti Hine, Ngāti Whātua, Tainui, and Welsh descent) is a commissioner with the Environment Court and has experience in both the profit and the non-profit sectors, including in Māori development, health, conservation, justice, education, environment, forestry, and farming. In 1991, Mr Prime was made a Member of the Order of the British Empire, and in 2016 he was made an Officer of the New Zealand Order of Merit for services to conservation and Māori.

Since the 1960s, Mr Prime has farmed beef, trees, and bees on his

whānau land in Motatau, Northland. He was a founding member of Ngā Whenua Rāhui, established in 1990 to protect Maori land through conservation covenants, and was involved with the Ngāti Hine kererū restoration project, which played a major part in increasing the number of wood pigeons in Ngāti Hine forests.

Mr Prime was presented with the Unesco Peace Builder's Award in 2000, the Northland Conservationist of the Decade Award in 1999, and the Royal Forest and Bird Society Old Blue Award in 1994. He is ex-chairperson and current kaumatua for Foundation North (formerly the ASB Community Trust) and has been a commissioner of the Environment Court since 2003.

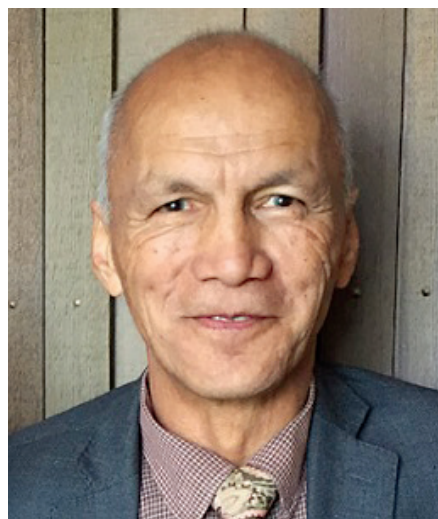
Derek Fox

Derek Fox (Ngāti Kahungunu, Ngāti Porou) has been involved in Māori broadcasting for more than 40 years. He has had a diverse career spanning journalism, communications, broadcasting, local and national politics, and publishing. Mr Fox has had a hand in most of the major Māori broadcasting

Dr Hana O'Regan



Kevin Prime



Derek Fox



initiatives, including the battle for, and the development of, Māori Television.

Starting at the New Zealand Broadcasting Corporation, Mr Fox moved to Television New Zealand in the early 1970s. He fronted the *Koha a Māori* current affairs programme and in 1983 set up *Te Karere* as a daily Māori news programme.

In the early 1990s, following his departure from Television New Zealand, Mr Fox launched *Mana* magazine and Rotorua-based Mana Māori Media, an independent news, current affairs, and television production house. He also served as chairperson of the Māori Broadcasters Association, later renamed Ngā Aho Whakaari, and was instrumental in setting up the Māori Television Service, serving as chair of the service's first board from 2001 to 2004.

Mr Fox has been a member of the board of the New Zealand Film and Sound Archives and of Toi Māori, and he also served Wairoa as a councillor for 12 years and as mayor for six.



Dr Grant Phillipson

Dr Grant Phillipson

We congratulate Dr Grant Phillipson on his reappointment to the Tribunal. Dr Phillipson was first appointed as a member in 2011 and is currently serving on the panels for the North-Eastern Bay of Plenty district inquiry, the Porirua ki Manawatū district inquiry, and the National Freshwater and Geothermal Resources inquiry.



Dr Monty Soutar

Dr Monty Soutar

We congratulate Dr Monty Soutar on being awarded Creative New Zealand's prestigious Michael King Writer's Fellowship. The award is towards the completion of *Kāwai: A Saga from the Uttermost End of the Earth*, a trilogy of historical novels that address the impact of colonisation in Aotearoa, each told from a Māori perspective. □

On 30–31 March 2021, members of the Waitangi Tribunal convened at the James Cook Hotel, Wellington, for their annual members' forum. Back row standing (l–r): Judge Michael Doogan, Judge Damian Stone, Professor Susy Frankel, Dr Paul Hamer, Basil Morrison, Tim Castle, Judge Terena Wara, Dr Grant Phillipson, Judge Layne Harvey, Tania Simpson, Ron Crosby, Dr Monty Soutar, Dr Ruakere Hond, and Judge Craig Coxhead. Front row (l–r): the Honourable Sir Douglas Kidd, Dr Tom Roa; Judge Stephanie Milroy, Judge Carrie Wainwright, Tā Hirini Mead, Chief Judge Wilson Isaac (chairperson), Professor Tā Pou Temara, Deputy Chief Judge Caren Fox, Dr Ann Parsonson, and Prue Kapua.



Farewell to Three Tribunal Members

He maimai aroha

E rere tonu ana te roimata aroha ki ngā whetū piataata mai ra. Koutou ngā Whatukura, haere atu koutou. Ngā mate huhua o te wā, ka tangi ka aue.

We mark the passing of three long-serving Tribunal members.

Brian Corban

Former Tribunal member Brian Corban QSO CNZM passed away on Sunday 2 May 2021.

Mr Corban was first appointed to the Tribunal in 1990. During the 1990s and early 2000s, he served on the Ngāti Awa Raupatu inquiry and the Kaipara district inquiry, which reported in 1999 and 2006 respectively. He was also an original member of the Tribunal's Governance Group, where his extensive business leadership experience was valued.

Mr Corban had a long record of service in public sector governance, including as chairperson of Genesis, Radio New Zealand, Television New Zealand, and, since 2019, KiwiRail and the New Zealand Railways

Corporation. He also served his community through chairman, trustee, and director roles in a wide range of organisations. For his public and community service, he was made a Companion of the Queen's Service Order in 1995 and a Companion of the New Zealand Order of Merit in 2009.

Dr Kihi Ngatai

Dr Kihi Ngatai QSM (Ngāi Te Rangi, Ngāti Ranginui, Ngāti Pukenga), a Tribunal member since 2008, passed away on Sunday 1 August 2021 at Te Haumaruru surrounded by his whānau.

Dr Ngatai served on urgent inquiries into the East Coast Treaty settlement, which reported in 2010; the Kōhanga Reo claim, which reported in 2012; and the Ngāpuhi Treaty settlement negotiations mandate claim, which reported in 2015. He was also from the outset a member of the panel that undertook the long-running Te Paparahi o te Raki district inquiry and issued the 2014 report *He Whakaputanga me te Tiriti* on the meaning and effect of te Tiriti o Waitangi / the Treaty of Waitangi.

Dr Ngatai was a respected kaumātua

and iwi leader, with extensive community involvement throughout the Tauranga area. He was an expert in te reo and tikanga Māori, and especially Tauranga whakapapa, mōteatea, and waiata. Following military service in the Korean War, he was a pioneer of the kiwifruit industry in the Bay of Plenty, and he served on the Bay of Plenty Conservation Board and as a kaumātua adviser for numerous Tauranga organisations.

The members of the Tribunal will greatly miss Dr Ngatai's wise counsel.

Dr Angela Ballara

Former Tribunal member Dr Angela Ballara passed away on Friday 17 September 2021.

Dr Ballara was first appointed to the Tribunal in 2003 and served for just over 17 years until obliged by ill-health to resign in February this year. From 2005, she was the historian member of the Whanganui Land Tribunal and was integral to the writing of its three-volume report, released in 2015. She was also appointed to the urgent inquiry panels that heard the Aotearoa

Brian Corban QSO CNZM



Dr Kihi Ngatai QSM



Dr Angela Ballara



Institute claim regarding Te Wānanga o Aotearoa and the Ngātiwai Mandate claim, which reported in 2005 and 2017 respectively, and was a member of the Health Services and Outcomes Tribunal, which released its first report – on primary healthcare claims – in 2019. At the time of her resignation, she was also serving on the Renewed Muriwhenua Land, Military Veterans, and Taihape Tribunal panels.

Dr Ballara was one of New Zealand's foremost scholarly authorities on Māori customary history and had an excellent working knowledge of te reo Māori. In 1991, she completed her doctoral thesis at Victoria University of Wellington on the origins of Ngāti

Kahungunu. Two landmark books followed: *Iwi: The Dynamics of Māori Tribal Organisation, c1769–c1945* in 1998 and *Taua: 'Musket Wars', 'Land Wars' or Tikanga? Warfare in Māori Society in the Early Nineteenth Century* in 2003. *Iwi* has been a highly influential book. In the foreword, former Tribunal chairperson Sir Edward Taihakurei Durie expressed the hope that her work would be widely circulated among Māori and would reach beyond the academic sphere to influence critical areas of Māori policy. Dr Ballara was prepared to tackle controversial subjects, an example being *Proud to be White? A Study of Racial Prejudice in New Zealand* (1986).

In the 1990s, Dr Ballara was part of the team that produced the *Dictionary of New Zealand Biography* and *Ngā Tangata Taumata Rau*, and she had particular responsibility for the Māori side to this project. She also published numerous articles, and prior to being a member she completed major research commissions for several Tribunal district inquiries on iwi and hapū interests and relationships, on which her expert knowledge was greatly valued.

Dr Ballara will be greatly missed by all who worked with her for her deep commitment to the Tribunal's kaupapa, her wisdom and vast fund of knowledge, and her generosity to her colleagues. □

Dr the Hon Ian Shearer

FORMER Tribunal staff member Ian Shearer passed away on 1 June at the age of 79. Dr Shearer began working at the Tribunal in 1994 as manager of the research staff and the Rangahaua Whānui research programme launched by the chairperson, Chief Judge Eddie Durie, to support the district inquiries to come. He went on to fill other important roles, including acting director in 1996 and, after that, manager of several sections of the Tribunal administration. In January 2005, he and his wife, Cheryl, retired to Tāneatua, his boyhood home.

Ian came to the Tribunal after a high-profile career in politics. Having obtained a doctorate in agricultural science and working at Ruakura Research Centre in the Waikato, he was elected the member for Hamilton East in 1975. He was brought into the Cabinet towards the end of the Muldoon Government's second term, holding the portfolios of Environment, Science and Technology, and, from late 1981, Broadcasting.

After losing his seat in the 1984



Dr the Hon Ian Shearer with Tribunal member Keita Walker at the handover of the Ngāti Awa Raupatu Report, 1999

election, Ian was the dean of science and engineering at Auckland University of Technology for nine years. However, he was still elected to public office beyond Parliament, serving terms on the Capital and Coast District Health Board in the early 2000s and, following his return to Tāneatua, as a Whakatāne district councillor from 2007 to 2010.

Those who worked with Ian at the Tribunal recall his ethic of hard work, his supportive approach, and the

satisfaction he drew from seeing others recognised for their achievements. Administratively, he kept the Tribunal ticking over, overseeing a major office relocation, managing external contracts, and organising all manner of events. It was a mark of his character that he would work at desks without natural light and views so that others could. His humility and ethic of service is recalled by Tā Pou Temara, who said he would meet Ian 'on the main street at Tāneatua with his bucket and broom going to clean the public toilets further on. He did this daily.'

One of Ian's proudest moments was presenting the *Ngāti Awa Raupatu Report* to Ngāti Awa at Taiwhakaea Marae in October 1999 – a homecoming that anticipated his later retirement to the Bay. It was bitterly bad luck that, despite being a physically fit teetotaler and non-smoker, Ian developed idiopathic pulmonary fibrosis, but it was a credit to him that he refused to let it beat him, as evidenced by his late 2020 visit to Wellington to visit old colleagues and friends. □

Staff Profiles

Sandra Edmonds

‘E rere kau mai te Awa nui. Mai i te Kāhui Maunga ki Tangaroa. Ko au te Awa, ko te Awa ko au.’

Sandra Edmonds (Te Atihaunui-a-Pāpārangi, Ngā Puhī) joined the Waitangi Tribunal Unit in March 2021 in the new role of deputy director. Prior to joining the unit, Sandra served 18 years in Te Kooti Whenua Māori across various roles, ranging from front-line services as a case manager/deputy registrar assisting Māori landowners with access to the court to providing dedicated judicial support to Māori Land Court judges. For the last 10 years she managed the Chief Judge’s Chambers, supporting the chief judge of the Māori Land Court to fulfil the functions of his office as chief judge and as chairperson of the Waitangi Tribunal. During her time in Chambers, Sandra also spent 18 months as a business adviser in the Whenua Māori Programme, which was jointly led by Te Puni Kōkiri and the Ministry of Justice.

The deputy director role was introduced under the Whenua Māori Programme to support the joint director Māori Land Court and Waitangi Tribunal Unit. In her role, Sandra is responsible for the operational leadership and management of the unit.

Born and raised in Whanganui, Sandra comes from a loving whānau with a deep connection to tikanga Māori and whanaungatanga and with a strong understanding of responsibility to iwi and hapu. She was a whāngai to her paternal aunt, Titikura Kipo Simon OSM, and the late Morvin Te Anatipa Simon MNZM, a rangatira, educator, teacher of te reo, kapa haka leader, and composer of many waiata, including the meaningful *Te Aroha*. Sandra says that her upbringing and life experiences are what instilled in her a strong



Sandra Edmonds

sense of responsibility, whanaungatanga, and resilience. Married with two children, and with a mokopuna due this month, Sandra looks forward to leading, and working with, the unit to achieve its strategic goals.

Wiliame Gucake

Wiliame Gucake joined the Waitangi Tribunal in October 2020 in the role of legal adviser/deputy registrar. He was appointed registrar in June 2021, in which capacity he is the lead legal adviser and provides technical leadership to the unit.

Wiliame grew up in Fiji and is of i-Taukei (Indigenous Fijian) and Samoan descent. After completing secondary studies in Fiji, he attended Victoria University of Wellington, where he graduated with a bachelor of laws and a bachelor of commerce, with a double major in economics and public policy. He subsequently completed a master of law at Victoria University, focusing on indigenous rights, public law, and Pacific constitutional issues. He has a wealth of Government experience, having previously worked at the



Wiliame Gucake

Treasury, the Ministry for Foreign Affairs and Trade, and the Ministry of Justice.

Prior to joining the unit, Wiliame was in private practice at a large law firm. He focused on public law litigation, largely acting for the Crown on a range of issues, including historical abuse in State care, prisoner human rights claims, ACC claims, and Treaty-related litigation. He was a junior Crown prosecutor in criminal matters.

Wiliame joined the unit to further his passion for indigenous rights and public law. He was inspired to become a lawyer after an incident where the local airline attempted to trademark indigenous Fijian tapa motifs. The customary owners of this traditional knowledge, people like his grandmothers, did not have the ability to challenge trademark applications. This sense of injustice led him to want to work towards the protection of indigenous rights.

Wiliame believes the essential role of the registrar is to ensure that claimants’ natural justice rights are upheld. He considers it a great privilege to serve the Tribunal and contribute to claimants being heard. □

Oranga Tamariki Report Released

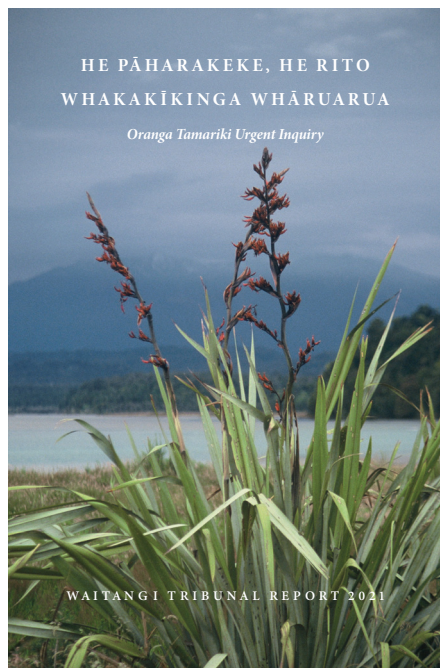
ON 30 APRIL 2021, the Waitangi Tribunal released its Oranga Tamariki urgent inquiry report, *He Pāharakeke, he Rito Whakakīkinga Whāruarua*, in pre-publication format.

The Tribunal granted urgency to the claims on the basis that tamariki Māori were likely to be suffering or continuing to suffer significant and irreversible prejudice as a result of the current or pending actions of Oranga Tamariki. The hearings were held in Wellington, Auckland, and Hastings between July and December 2020 and concluded with closing submissions in February 2021. The panel comprised Judge Michael Doogan (presiding), Professor Rawinia Higgins, Kim Ngarimu, and Professor Tā Pou Temara.

The report addressed claims concerning the disproportionate number of tamariki Māori taken into State care by Oranga Tamariki. It focused on the following three issues:

- ▶ Why has there been such a significant and consistent disparity between the number of tamariki Māori and non-Māori children being taken into State care under the auspices of Oranga Tamariki and its predecessors?
- ▶ To what extent will the legislative policy and practice changes introduced since 2017, and currently being implemented, change this disparity for the better?
- ▶ What (if any) additional changes to Crown legislation, policy, or practice might be required in order to secure outcomes consistent with te Tiriti / the Treaty and its principles?

From the outset, the Tribunal was greatly assisted by the Crown's acknowledgement that there was a significant disparity between the proportions of tamariki Māori and non-Māori children being taken into care. The Crown accepted that the broader



forces of colonisation and structural racism, alongside the ongoing effect of historical injustices on whānau, hapū, and iwi, contributed to this disparity. In addition, the Crown recognised that it had failed to implement the recommendations of the 1988 Ministerial Advisory Committee report *Puao-te-Ata-tu* comprehensively.

In its report, the Tribunal found that persistent and significant disparity can, in part, be attributed to the effects of alienation and dispossession. However, the disparity also reflected the Crown's failure to honour the promise to Māori of the right of cultural continuity embodied in the Treaty's guarantee of tino rangatiratanga over their kāinga. As such, the report found that the disparities were a direct consequence of the Crown's intrusion into the rangatiratanga of Māori over their kāinga. In addition to this intrusion, the Tribunal found a range of breaches of the Treaty principles of partnership, active protection, and options, all of which individually and in combination operated to cause significant prejudice.

The Tribunal's primary recommendation was that the Crown should step back from further intrusion into what was reserved to Māori under te Tiriti / the Treaty and allow Māori to reclaim their space. Māori should be given the right to chart their own path towards a contemporary realisation of the Treaty promise of rangatiratanga over their kāinga. The Tribunal emphasised that this need for change had nothing to do with separatism and everything to do with realising the Treaty promise that two peoples may coexist harmoniously. The Tribunal affirmed the view expressed by the authors of *Puao-te-Ata-tu* over 30 years ago:

The traditional policy of assimilation and one law for all has become so ingrained in national thinking that it is difficult for administrators to conceive of any other, or to appreciate that indigenous people have particular rights to a particular way of life.

The Tribunal therefore recommended that a Māori Transition Authority be established. It called on the Crown to support this transformation but noted that it was not one that the Crown could or should lead. As a result, the Tribunal refrained from making overly prescriptive recommendations, instead emphasising the process by which Māori could lead the transformation.

The Tribunal considered that the Māori Transition Authority should be independent of the Crown and its departments. Its primary function would be to identify and approve ways to transfer to Māori – where appropriate – some of the powers, functions, and responsibilities currently performed by Oranga Tamariki and other Crown agencies. The authority should have the power to make such a transfer where satisfied that the particular



Oranga Tamariki protestors march on Parliament, 30 July 2019

Māori community or organisation had the necessary capacity and capability.

The Tribunal called for the establishment of this transitional body as a priority. It should also be given a wide mandate to consider system improvements both within and outside of the legislative and policy settings for Oranga Tamariki. The Tribunal recommended that the Crown:

- ▶ assist the Māori Transition Authority with information and advice as required; and
- ▶ ensure that the Māori Transition Authority had sufficient financial and administrative support to undertake and deliver a reform of this scope.

Importantly, while the Tribunal supported calls for transformation towards a ‘by Māori for Māori with Māori’ approach, its report contained some caveats.

First, the Tribunal did not support some claimants’ calls for the abolition of Oranga Tamariki. For at least the foreseeable future, the Tribunal said,

there was a role for an Oranga Tamariki statutory social worker, backed by the State’s coercive powers, in cases where a Māori organisation (be it whānau, hapū, or a Māori provider) met resistance to an intervention considered necessary for the safety of a child or children. The Tribunal accepted without hesitation that all children had the right to be protected from abuse and harm and that the State had a legitimate function to provide that protection where necessary.

Secondly, the Tribunal was mindful of the risk of replacing one bureaucracy with another. While it accepted that significant transformation was required, it was not simply a case of calculating and transferring to a new Māori organisation proportionate responsibility and resources from Oranga Tamariki. Such an approach would risk transferring many system problems, the Tribunal said. It might also divert attention to the resourcing of the new Māori organisation before its system design had been properly

worked through and it risked ‘commercialising’ kinship.

Thirdly, the Tribunal noted the complexity of family dynamics and identity. These complexities could mean that determining who should provide intervention or support services would not always be straightforward. Tamariki Māori who had been separated from their whakapapa and in State care for some time could not simply be taken from what they knew to whanaunga they had never met. There were also questions of capacity and access to specialised help in Māori communities that would need to be worked through.

The panel was supported by Waitangi Tribunal Unit staff and by counsel assisting the inquiry, Ophir Cassidy.

The report has received wide coverage in the media since its release, with the Children’s Commissioner saying that the Tribunal had presented the Government with a ‘once in a generation opportunity to get it right for mokopuna and whānau Māori’. □

Inquiry Programme Overview, 2020–21

THE YEAR ending June 2021 saw one of the highest levels of activity in the Tribunal's long history: 25 hearings in seven inquiries, a further 19 judicial conferences, and one mediation.

In addition, Tribunal panels in 10 inquiries held no fewer than 58 meetings, mainly to deliberate while preparing their reports. In all, these events required some 200 event days across 15 active inquiries, double the level just three years previously.

During the first few months, the high level of activity reflected in part the effort to catch up following postponements during the Covid-19 lockdown and its aftermath from March to June of 2020. This was, however, not a large influence as the Tribunal adapted to new ways of operating under the alert level restrictions, in particular with the safety procedures set out in the chairperson's Covid-19 protocols and through remote participation via video link. The experience gained enabled the Tribunal to adjust quickly to the sudden raising of the alert levels for several shorter periods through the year.

The year began with 16 inquiries under action and one (Wairarapa ki Tararua remedies) suspended pending the outcome of judicial review proceedings in the High Court. During the year, two inquiries – one urgent (Oranga Tamariki) and one district (Te Rohe Pōtae) – concluded with the release of their reports. No new urgent or other inquiries commenced, while one (National Freshwater) resumed to conduct its stage 3 inquiry into geothermal resource claims.

At the year's end, 15 inquiries were under way. Overwhelmingly, the Tribunal's effort was concentrated in progressing the six district and six kaupapa inquiries in progress throughout the year.

Urgency applications

Applications for urgency, which peaked back in 2017, remained at a low level. Overall, the number of applications on hand at the end of June 2021 comprised eight cases involving 16 claims and a ninth case with 16 individual claims arising from the Waikeria Prison protest. Of these, proceedings in one case stood adjourned, while two longstanding remedies applications (10 claims) for which the claimants were seeking urgency remained under consideration. The majority of applications for urgency during the year have continued to relate to current issues of Crown policy and practice, with few arising from Treaty settlement negotiations and no new remedies applications.

Urgent inquiries

The year began with two urgent inquiries under way:

- ▶ The **Oranga Tamariki** Tribunal completed its inquiry into claims concerning the disproportionately high and rising number of tamariki Māori being taken into State custody (see the article on page 8).
- ▶ The Tribunal inquiring into the **Ngā Hapū o te Moutere o Motiti** claim has continued to prepare its report.

Remedy proceedings

Applications for remedies from claimants in the Turanga (Gisborne) and Wairarapa ki Tararua district inquiries have been in inquiry under urgency. They arise from claims that the Tribunal had earlier reported as well-founded:

- ▶ The **Wairarapa ki Tararua** Tribunal is considering two groups of

claimant applications for binding recommendations. One is for the return of former State-owned enterprise land on the Pouākani 2 block, which the Crown vested in Wairarapa Moana Māori in 1916 and which includes the site of Mercury Energy's Maraetai Hydro Power Station. The other is for the return of Crown forest land in the Ngāumu Forest east of Masterton. The Tribunal's preliminary determination, released in March 2020, was taken by Mercury and others to the High Court for judicial review. In March 2021, Justice Cooke found for the applicants and returned several aspects to the Tribunal for reconsideration. The *Mercury* judgment has since been appealed and the inquiry remains suspended until the court proceedings have been concluded.

- ▶ The **Tūranga/Mangatū** Tribunal is considering applications for the return of Mangatū Crown forest land inland from Gisborne. The Tribunal has continued to write its report in parallel with a process to clarify the parties' positions on ways of implementing the Tribunal's recommendations.

District inquiries

During the year under review, five district inquiries into some 900 claims were under action:

- ▶ **Renewed Muriwhenua Land:** The Tribunal continued its preparation for a limited inquiry into claims not or partly heard in the original district inquiry before turning to consider claimants' applications for remedies. In light of the *Mercury* judgment, the Tribunal has recently decided to extend the scope of its inquiry to include all post-1865 and unheard pre-1865 claims not



Claimant Pat Seymour addresses members of the Porirua ki Manawatū Tribunal on access and environmental issues at a site visit to Lake Kōpūtara in April 2021

covered by the Treaty settlements that iwi in the district had previously negotiated with the Crown.

- ▶ **Te Rohe Pōtae (King Country):** The Tribunal released the sixth and final part of its report *Te Mana Whatu Ahuru*, which examines regionally specific claims, in December 2020.
- ▶ **Te Paparahi o te Raki (Northland):** The Tribunal has continued to prepare its stage 2 report.
- ▶ **Taihape:** The Tribunal held three hearings of closing submissions during the year, with the final hearing postponed to August 2021. A priority Tribunal report on landlocked land is in preparation for early release.
- ▶ **Porirua ki Manawatū:** In the second phase of the inquiry, the Tribunal has continued the writing of its report on the claims of Te Āti Awa/Ngāti Awa ki Kāpiti. In the third phase, the Tribunal held five hearings of the claims of Ngāti Raukawa and affiliated groups.
- ▶ **North-Eastern Bay of Plenty:** Casebook research has been organised in two phases. In phase 1, the first Tribunal-commissioned research report on raupatu was completed early in the year, and

two further commissions were well advanced at year's end. The Crown Forestry Rental Trust is undertaking most of the phase 2 research. In May 2021, the deputy chairperson declined urgency for a number of claims challenging the Crown's settlement negotiation process with the mandated Whakatōhea group. In July 2021, the Tribunal granted a priority hearing on two of the issues raised by the applicants.

- ▶ **Standing panel inquiry into remaining historical claims:** The assessment of research needs for eligible claims continued in the region covering the south-western North Island, the South Island, and the Chatham Islands.

Kaupapa inquiries

Kaupapa inquiries hear claims that relate to significant national issues affecting most or all Māori. Six inquiries were under way throughout the year and a seventh resumed in March 2021:

- ▶ **Māori Military Veterans:** Gap-filling research has been filed and preparations for the second round of hearings are under way.

▶ Health Services and Outcomes:

In its stage 1 report on the legislative framework and funding process for primary healthcare, released on 1 July 2019, the Tribunal asked the parties to discuss its recommendations concerning historical underfunding and the creation of an independent Māori health authority. The claimants and the Crown have submitted progress reports on implementation but at year's end had yet to reach final agreement.

In the first phase of stage 2 of the inquiry, preparations to hear claims concerning Māori with disabilities continued.

- ▶ **Mana Wāhine:** In July 2020, the Tribunal set out the scope of the inquiry, endorsed the proposal for a joint research committee, and agreed to hold a series of tūāpapa hearings designed to provide foundational information for the inquiry and covering aspects of tikanga as they relate to wāhine Māori pre-1840. Commencing in February 2021, two hearings had been held by year's end, with four further hearings planned. In April 2021, the Tribunal set a casebook research programme comprising six commissioned reports.
- ▶ **Housing Policy and Services:** Responding to requests from many of the claimants, in September 2020 the Tribunal decided to prioritise claims concerning Māori homelessness for early hearing. The three planned hearings were held between March and June 2021. In March 2021, the Tribunal set the casebook research programme for the main inquiry, with the Crown taking responsibility for one of the six reports and the Tribunal to commission the other five.
- ▶ **Marine and Coastal Area (Takutai Moana) Act:** Stage 2 of the inquiry focuses on the Treaty compliance of the Marine and Coastal Area (Takutai Moana) Act 2011 and also Crown policy and practice.

Housing Kaupapa Inquiry Underway

STAGE 1 of the Housing Policy and Services Kaupapa inquiry is well underway. Three weeks of hearings have been held – two at Te Puea Memorial Marae in Auckland (22–26 March and 17–21 May) and one in Wellington (21–25 June).

This first stage focuses on Māori homelessness and the Crown's contemporary strategy and policy response to the problem. The Tribunal is hearing evidence about Crown policies, practices, actions, and alleged omissions dating back to 2009, when the Crown first officially defined homelessness. A total of 79 claims have been filed and 21 interested parties are also taking part.

Over the two weeks of hearings at Te Puea Memorial Marae in Auckland – which has a long history of providing practical tikanga-based support for the homeless – the Tribunal heard from claimants and expert witnesses. They included people with lived experience of homelessness and Māori social service providers such as Hurimoana Dennis from Te Puea Marae's Manaaki Tāngata project, the country's first kaupapa Māori transitional housing programme. Technical experts presented evidence on topics ranging from the relationship between housing and health, the economics of housing, and the vulnerability of specific groups to



Claimant and rongoā Māori expert Aorangi Kawiti gave evidence of her own experience of homelessness, describing it as 'having nowhere safe and securely yours to go to rest and be your natural self as Tangata Whenua, right where you belong'.

homelessness, including former prisoners and rangatahi.

The third hearing was devoted to Crown evidence. Witnesses included representatives from Te Puni Kōkiri, the Ministry of Social Development, and Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development, which was established in 2018 to coordinate Government efforts to combat the housing shortage and facilitate affordable housing. The Tribunal heard that the Crown 'does not shy away from the fact that Aotearoa New Zealand has a housing crisis' and is

committed to working with Māori to achieve better housing outcomes and to address Māori homelessness. Officials said the Crown welcomed the inquiry.

The panel comprises Judge Craig Coxhead (presiding), Prue Kapua, Basil Morrison, and Dr Paul Hamer. Following the first stage, the inquiry will focus on housing policy and practice and housing market regulation; social housing; the use of Māori land for housing; and the connections between socio-economic factors and housing. □

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Five hearings were held between September 2020 and June 2021, with closings to follow in August 2021.

▶ **Trans-Pacific Partnership Agreement:** Two of the three remaining issues in the inquiry (engagement and secrecy) were settled by Tribunal-led mediation in October 2020. The final issue (data sovereignty) went to hearing in

November 2020, and the Tribunal is well advanced with the writing of its report.

▶ **National Freshwater and Geothermal Resources:** In March 2021, responding to a claimant request, the Tribunal agreed to start the last phase of its inquiry – into geothermal resource claims – and started preparations for hearings. □

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