

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI THE WAITANGI TRIBUNAL



PŪRONGO-Ā-TAU O TE MATARIKI 2022 KI 2023
ANNUAL REPORT MATARIKI 2022 – 2023

[24 JUNE 2022 – 14 JULY 2023]

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COVER PHOTOS: Top left: Deputy Chairperson Judge Sarah Reeves and Tribunal member Kim Ngarimu at a hearing for the Tūāpapa phase of the Mana Wāhine Kaupapa Inquiry at Te Mānuka Tūtahi Marae, Whakatāne, July 2021; Bottom left: Kaikaranga Rhonda Tibble and Chief Judge Dr Caren Fox at the pōwhiri for her swearing-in ceremony as Chief Judge of the Māori Land Court held at The Pā, University of Waikato, Kirikiriroa, 24 August 2023; Right: Dr Monty Soutar, former Chairperson Judge Wilson Isaac, and Professor Tā Pou Temara at Hearing One of the Military Veterans’ Kaupapa Inquiry at Tūnohopū Marae, Rotorua, June 2023.

MIHI - INTRODUCTION



Aio ki te nuku

Aio ki te rangi

*Ko Te Ātiawa nō
runga i te rangi*

Tīhei mauri ora

Tēnā tātou

Welcome to the first Annual Report of the Waitangi Tribunal. This new publication is intended to be an opportunity, each Matariki, for the Tribunal to give claimants and others important information about the activity of the Tribunal over the past year. This being our first such report, we include contextual information about the membership and jurisdiction of the Tribunal so that those who are unfamiliar with the work of the Tribunal will come away with a broad understanding of these.

This year the leadership of the Tribunal changed with the retirement of Chief Judge Wilson Isaac as Chairperson in April 2023. I was Acting Chairperson until the appointment of Chief Judge Dr Caren Fox in September 2023. I introduce this report as the Acting Chairperson at the completion of the period covered in this review.

This report updates the Tribunal's progress towards achieving its five strategic goals for 2014–2025: completing the final district inquiries, completing or advancing at least half of the major kaupapa inquiries, hearing contemporary and urgent claims, and addressing historical claims that have not been heard within the district inquiry process. There is also information about innovations in Tribunal process and procedure in response to the kaupapa inquiry programme.

As always, the Tribunal has delivered a full programme of work across all of its inquiries. The incoming 2024 year will be equally as busy, and we are also looking forward to the 50th anniversary of the Tribunal in 2025.

There are currently 13 Waitangi Tribunal inquiries in hearing or preparation for hearing, including our final district inquiries in Porirua ki Manawatū, Muriwhenua Lands, and the North-Eastern Bay of Plenty; kaupapa inquiries into claims concerning health services, mana wāhine, Māori military veterans, housing policy and services, freshwater and geothermal resources, the justice system and our constitutional structure, and a current urgent inquiry into Crown policy relating to Kura Kaupapa Māori. The Taihape: Rangitikei ki Rangipō District Inquiry is largely in the report writing stage now, as is the Te Paparahi o Te Raki: Northland District Inquiry.

Collectively, these inquiries are hearing over 1000 claims that have been lodged with the Tribunal ranging from specific Treaty issues affecting individual hapū and whānau to national issues affecting all Māori. The purpose of the work outlined in this report, as is required by our empowering legislation, is to ensure that all claimants are given a chance to have their claims heard and inquired into by the Tribunal and responded to by the Crown. The Tribunal endeavours to carry out this work in a manner that recognises the history and complexities of claims and claimants and sets a path forward for Māori and the Crown to address the issues that they raise.

The Tribunal has issued six reports in the past year, covering the claims of Ngā Hapū o te Moutere o Motiti, Te Ātiawa/Ngāti Awa in Porirua ki Manawatū and iwi of Te Paparahi o te Raki, as well as claims concerning Māori homelessness, access to justice and resource management reforms. All of these reports are summarised in the following pages.

This report will demonstrate on an annual basis the ongoing work of the Tribunal to meet the challenge laid down by claimants: to hear their voices, investigate their claims, and provide guidance to them and to the Crown for the ongoing work of recognising and addressing breaches of the Treaty and together building a stronger Treaty partnership.

A handwritten signature in dark ink, appearing to read 'Sarah Reeves'.

Kaiwhakawā Sarah Reeves

Tiamana Whakakapi/Acting Chairperson

THE WAITANGI TRIBUNAL – A SNAPSHOT



HE AHA? / WHAT?

Set up by the Treaty of Waitangi Act 1975, the Waitangi Tribunal is a permanent commission of inquiry. It makes recommendations on claims brought by Māori relating to legislation, policies, actions, or omissions of the Crown alleging breaches of the principles of the Treaty of Waitangi.¹

KO WAI ME KEI HEA? / WHO AND WHERE?

The Tribunal has up to 20 members. The Waitangi Tribunal is led by a chairperson, who is assisted in this role by a deputy chairperson. The Waitangi Tribunal Unit of the Ministry of Justice provides operational support to the Waitangi Tribunal. The Waitangi Tribunal and the Waitangi Tribunal Unit's offices are in Wellington, but hearings are held throughout Aotearoa at marae and any other appropriate venues.

HE PĒHEA? / HOW?

NGĀ KERĒME / CLAIMS

The Tribunal can hear claims submitted to it by any Māori which alleges they are or are likely to be prejudicially affected by any legislation, policies, actions, or omissions that were or are inconsistent with the principles of the Treaty.²

There are generally two types of claims. Historical claims are those that relate to matters that occurred before 21 September 1992.³ Contemporary claims are those that relate to

matters that occurred on or after 21 September 1992. Some claims can raise both historical and contemporary issues.

NGĀ PAKIREHUA / INQUIRIES

As a commission of inquiry, the Tribunal's proceedings are by way of inquiry and report. This is done by either inquiring directly into a claim or grouping related claims into a joint inquiry.

In **district inquiries**, the Tribunal groups historical and contemporary claims to be heard concurrently within geographical areas called inquiry districts. For example, Te Paparahi o Te Raki: the Northland Inquiry considered claims within the Northland region.

In **kaupapa inquiries**, the Tribunal groups for concurrent inquiry claims that concern or relate to a particular theme or 'kaupapa'. For example, the Mana Wāhine Kaupapa Inquiry will hear claims which allege prejudice to wāhine Māori as a result of Crown legislation, policies, practices, actions or omissions.

An **urgent inquiry** is where the Tribunal decides to urgently inquire into a claim(s) or an urgent application for remedies.

A **priority inquiry** is where the Tribunal has determined there are grounds to prioritise an inquiry into a claim, group of claims or part of a claim, because of the importance of the claim issues raised and the prospect of significant and irreversible prejudice to Māori.

THE MEMBERS OF THE WAITANGI TRIBUNAL

The Waitangi Tribunal has a chairperson and up to 20 members appointed by the Governor-General on the recommendation of the Minister for Māori Development. Members are appointed for their expertise and knowledge of the matters likely to come before them.⁴

The Acting Chairperson of the Waitangi Tribunal at the completion of the period of this report was Judge Sarah Reeves of the Māori Land

Court. Other judges of the Māori Land Court, while not members of the Waitangi Tribunal, are able to serve as presiding officer for a Tribunal panel. Legally qualified members may also be presiding officers.

A panel of between three to seven members is appointed to carry out an inquiry, who sit alongside a presiding officer.

Acting Chairperson Judge Sarah Reeves *Te Ātiawa*



Judge Sarah Reeves was appointed to the Māori Land Court on 10 December 2010. She is a resident judge of the Te Waipounamu District of the Māori Land Court.

Judge Reeves was Acting Chairperson of the Waitangi Tribunal at the completion of the period covered by this report. She is the presiding officer of the Mana Wāhine Inquiry.

Dr Monty Soutar, ONZM

Ngāti Porou, Ngāti Awa, Ngāi Tai, Ngāti Kahungunu



Monty Soutar was appointed to the Tribunal in 2002. Dr Soutar is a professional historian and author who has worked widely with iwi and Māori communities. He has been a teacher, soldier, university lecturer, iwi rūnanga chief executive and senior historian with the Ministry for Culture and Heritage.

Dr Soutar sits on the Porirua ki Manawatū District Inquiry, the Taihape Rangitikei ki Rangipō District Inquiry, the Military Veterans Inquiry, and the Standing Panel Inquiry.⁶

Dr Robyn Anderson

Robyn Anderson was appointed to the Tribunal in 2004. Dr Anderson is a historian and has undertaken research projects for the Waitangi Tribunal and for claimants from the Hauraki, Kaipara, and Whanganui districts.



Dr Anderson sits on the Te Paparahi o Te Raki: Northland District Inquiry, the North-Eastern Bay of Plenty District Inquiry, the Standing Panel Inquiry, the Mana Wāhine Inquiry, and the Freshwater and Geothermal Resources Inquiry.

Professor Tā Pou Temara *Ngāi Tūhoe*

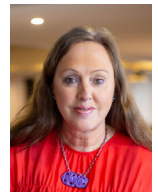


Tā Pou Temara was appointed to the Tribunal in 2008. He is a professor of Māori Philosophy at Te Whare Wānanga o Awanuiārangi and is a recognised authority on Māori customary practice and whaikōrero. He was a director of Te Panekiretanga o Te Reo.

Tā Pou Temara sits on the Freshwater and Geothermal Resources Inquiry, the Marine and Coastal Area (Takutai Moana) Act Inquiry, the Taihape Rangitikei ki Rangipō District Inquiry, and the Military Veterans Inquiry.

Tania Simpson

Tainui, Ngāpuhi, Ngāi Tahu



Tania Simpson was appointed to the Tribunal in 2008. She has had a career in public policy and governance, specialising in Māori Development, Treaty of Waitangi partnerships and Corporate Governance. She is an experienced governor, holding several directorships on Tainui Group Holdings Ltd, Auckland Airport, Meridian Energy, and the Waitangi National Trust.

Ms Simpson sits on the Porirua ki Manawatū District Inquiry, the Health Services and Outcomes Inquiry, and the Renewed Muriwhenua Land Inquiry.

Basil Morrison, CNZM, JP

Basil Morrison was appointed to the Tribunal in 2008. Originally a dairy farmer at Hikutaia, Basil Morrison has served in local government since 1971. He was the inaugural mayor of the Hauraki District Council. Mr Morrison sits on the Housing Policy and Services Inquiry, and the North-Eastern Bay of Plenty District Inquiry.



Ron Crosby

Ron Crosby was appointed to the Tribunal in 2011. He spent 30 years as a leading lawyer, particularly in Treaty-related and resource management cases. He has written several books on New Zealand history.



Mr Crosby sits on the Marine and Coastal Area (Takutai Moana) Act Inquiry, and the Freshwater and Geothermal Resources Inquiry.⁷

Dr Grant Phillipson

Grant Phillipson was appointed to the Tribunal in 2011. He is a historian with a longstanding relationship with the Tribunal having been a commissioned researcher. From 1995 to 2011 he worked as the Chief Historian for the Waitangi Tribunal Unit until his appointment as a member.



Dr Phillipson sits on the Porirua ki Manawātū District Inquiry, the North-Eastern Bay of Plenty District Inquiry, the Military Veterans Inquiry, the Constitutional Kaupapa Inquiry and the Freshwater and Geothermal Resources Inquiry.

Professor Rawinia Higgins

Ngāi Tūhoe

Rawinia Higgins was appointed to the Tribunal in 2013. She is the Deputy Vice-Chancellor Māori at Te Herenga Waka. She is also the Māori Language Commissioner/Chair of Te Taura Whiri i te Reo Māori. Her expertise is in Māori language revitalisation and, more specifically, language planning and policy. She was instrumental in shaping the current Māori language legislation and policy framework. Professor Higgins also holds several governance positions.



Professor Higgins sits on the Marine and Coastal Area (Takutai Moana) Act Inquiry, and the Kura Kaupapa Māori Urgent Inquiry.

Professor Linda Tuhiwai Smith, CNZM

Ngāti Awa, Ngāti Porou, Tūhourangi

Linda Tuhiwai Smith was appointed to the Tribunal in 2016. She is a Distinguished Professor at Te Whare Wānanga o Awanuiārangī. Professor Smith is known internationally for her work on decolonising research methodologies, Indigenous education, and kaupapa Māori.



Professor Smith sits on the Mana Wāhine Inquiry, and the Health Services and Outcomes Inquiry.

Professor Tom Roa

Ngāti Maniapoto, Waikato Tainui

Tom Roa was appointed to the Tribunal in 2016. He is a Professor in the Faculty of Māori and Indigenous Studies at the University of Waikato. He is an expert in translation between te reo Māori and English and the oral and written history of Waikato-Tainui, Ngāti Maniapoto, and the Kīngitanga.



Professor Roa sits on the Health Services and Outcomes Inquiry, the Renewed Muriwhenua Land Inquiry, the Mangatū Remedies Inquiry, and the North-Eastern Bay of Plenty District Inquiry.

Kim Ngārimu

Ngāti Porou

Kim Ngārimu was appointed to the Tribunal in 2018. Ms Ngārimu has an extensive public service career dating back to the early 1990s. She is currently self-employed as a consultant and a professional governor.



Ms Ngārimu sits on the Mana Wāhine Inquiry.⁸

Dr Ruakere Hond

Taranaki, Te Ati Awa

Ruakere Hond was appointed to the Tribunal in 2018. Dr Hond is a longstanding advocate of te reo Māori revitalisation and the Parihaka community. He has been a board member of Te Taura Whiri i te Reo Māori and Te Mātāwai.



Dr Hond sits on the Renewed Muriwhenua Land Inquiry, the Mana Wāhine Inquiry, and Te Rau o te Tika: the Justice System Inquiry.

Prue Kapua

Te Arawa

Prue Kapua was appointed to the Tribunal in 2018. She is a leading Treaty lawyer with an extensive background in Treaty of Waitangi and environmental law. She has represented whānau, hapū, and iwi claimants in several Waitangi Tribunal inquiries. She also served as President of the Māori Women's Welfare League from 2014 – 2022.



Ms Kapua sits on the Housing Policy and Services Inquiry, the North-Eastern Bay of Plenty District Inquiry, and the Constitutional Kaupapa Inquiry.

Dr Paul Hamer

Paul Hamer was appointed to the Tribunal in 2020. Dr Hamer is a historian with extensive experience in the public sector. He has previously worked at the Waitangi Tribunal leading staff support in the drafting of the Wai 262 Ko Aotearoa Tēnei report and the Te Paparahi o Te Raki stage one report.



Dr Hamer sits on the Taihape: Rangitikei ki Rangipō District Inquiry, the Housing Policy and Services Inquiry, and Te Rau o te Tika: the Justice System Inquiry.

Professor Susy Frankel, FRSNZ

Susy Frankel was appointed to the Tribunal in 2020. She is a Professor of Law and the Chair of Intellectual Property and International Trade Law at Te Herenga Waka Victoria University of Wellington. She assisted then Chief Judge Joe Williams and the Tribunal panel as consulting counsel in the Wai 262 inquiry.



Professor Frankel sits on the Kura Kaupapa Māori Urgent Inquiry.⁹

Dr Hana O'Regan

Kai Tahu

Hana O'Regan was appointed to the Tribunal in 2021. Dr O'Regan has worked in the areas of language revitalisation, identity and cultural development, te reo Māori, and education for over 25 years. Since late 2020, she has been Tumu Whakarae of Tātai Aho Rau - CORE Education.



Dr O'Regan sits on Te Rau o te Tika: the Justice System Inquiry, the Military Veterans Inquiry, and has been a Tribunal appointed Mediator.

Kevin Prime, ONZM

Ngāti Hine

Kevin Prime was appointed to the Tribunal in 2021. Mr Prime has been a farmer and forester in Mōtatau, Northland for the last 50 years. He has also served on ministerial advisory groups on a wide range of matters. Mr Prime is an Environment Court commissioner.



Mr Prime sits on the Constitutional Kaupapa Inquiry and has been a Tribunal appointed mediator.¹⁰

Derek Fox

Ngāti Kahungunu, Ngāti Porou

Derek Fox was appointed to the Tribunal in 2021. For more than 40 years, Derek Fox has been at the forefront of Māori broadcasting. His diverse career has spanned journalism, communications, broadcasting, local and national politics, and publishing.



Mr Fox sits on the Kura Kaupapa Māori Urgent Inquiry and the Constitutional Kaupapa Inquiry.

Herewini Te Koha

Ngāti Porou, Ngāpuhi, Ngāti Tamaterā

Herewini Te Koha was appointed to the Tribunal in 2021. Mr Te Koha has extensive public sector experience in Māori development and a legacy of strong iwi leadership. He is also the former Chief Executive of Te Rūnanganui o Ngāti Porou.



Mr Te Koha sits on the Kura Kaupapa Māori Urgent Inquiry.

Professor Emeritus David Williams

David V Williams was appointed to the Tribunal in 2023. Professor Williams is a leading academic in constitutional law, legal history, and Treaty of Waitangi law. He has worked with many hapū and iwi as an historian, and as a claims negotiator.



Professor Williams sits on the Constitutional Kaupapa Inquiry.

Dr Ann Parsonson*

Ann Parsonson was appointed to the Tribunal in 2001 and has been the historian member on a number of major district historical inquiries. Her publications are on New Zealand history, Māori history, and Treaty history.



* Dr Parsonson's warrant as a member expired in 2021 but she is completing her duties as a member of the Te Paparahi o Te Raki: Northland District Inquiry and the Mangatū Remedies Inquiry.

The Honourable Sir Douglas Kidd, KNZM*

Sir Douglas Kidd was appointed to the Tribunal in 2004. Sir Doug served in several ministerial positions in the 1990s, including as Minister of State-Owned Enterprises, Fisheries, and Māori Affairs. He has also served as Speaker of the House.



* Though Sir Doug's warrant as a member expired in 2014, he continued his duties as a member of the Military Veterans Inquiry, Taihape Rangitikei ki Rangipō District Inquiry, and Porirua ki Manawatū District Inquiry. In 2023, Sir Doug resigned as a member of those panels.

Tim Castle*

Tim Castle was appointed to the Tribunal in 2008. He is a barrister and has served as counsel in numerous Waitangi Tribunal hearings. Mr Castle has been a judge of the Court of Arbitration for Sport in Lausanne since 1991.



* Though Mr Castle's warrant as a member expired in 2014, he continued his duties as a member of the Mangatū Remedies Inquiry.

CURRENT PRESIDING OFFICERS

Chief Judge Dr Caren Fox¹¹

Ngāti Porou

Chief Judge Dr Fox was appointed to the Māori Land Court on 1 October 2000. She is one of the resident judges for the Tairāwhiti District of the Māori Land Court.



Chief Judge Fox is the presiding officer for the Porirua ki Manawatū District Inquiry and the Constitutional Kaupapa Inquiry.

Judge Wilson Isaac

Ngāti Porou, Ngāi Tūhoe, Ngāti Kahungunu

Judge Isaac was appointed to the Māori Land Court on 11 March 1994. He served as Chief Judge of the Māori Land Court and Chairperson of the Tribunal from August 2009 until his retirement in April 2023. Judge Isaac currently holds an acting warrant as a temporary judge of the Māori Land Court.



Judge Isaac is the presiding officer for the Military Veterans Inquiry, Freshwater and Geothermal Resources Inquiry, and the Standing Panel Inquiry.¹²

Judge Carrie Wainwright

Judge Wainwright was appointed to the Māori Land Court on 17 November 2000. She is a resident Judge for the Tairāwhiti District of the Māori Land Court.



Judge Wainwright is the presiding officer of the Renewed Muriwhenua Land Inquiry and Te Rau o te Tika: the Justice System Inquiry. Judge Wainwright has also been a Tribunal appointed mediator.

Judge Stephanie Milroy

Ngāi Tūhoe, Ngāti Whakaue

Judge Milroy was appointed to the Māori Land Court on 9 September 2002. Based in Hamilton, she is a resident judge for the Te Waipounamu District of the Māori Land Court.



Judge Milroy is the presiding officer of the Mangatū Remedies Inquiry.

Judge Craig Coxhead

Ngāti Makino, Ngāti Pīkiao, Ngāti Awa, Ngāti Maru

Judge Coxhead was appointed to the Māori Land Court on 25 January 2008. Based in Rotorua, he is a resident judge for the Waiariki District of the Māori Land Court.



Judge Coxhead is the presiding officer for the Te Paparahi o Te Raki: Northland Inquiry, and the Housing Policy and Services Inquiry.

Judge Michael Doogan

Judge Doogan was appointed to the Māori Land Court on 25 January 2013. Based in Wellington, he provides support for hearings in the Aotea District of the Māori Land Court.



Judge Doogan is the presiding officer for the North-Eastern Bay of Plenty District Inquiry. Judge Doogan has also been a Tribunal appointed mediator.

Judge Miharo Armstrong

Te Whānau a Apanui

Judge Armstrong was appointed to the Māori Land Court on 1 August 2014. Based in Whangārei, he is one of the resident judges for the Taitokerau district of the Māori Land Court.



Judge Armstrong is the presiding officer for the Marine and Coastal Area (Takutai Moana) Act Inquiry.

Judge Damian Stone

Ngāti Kahungunu

Judge Stone was appointed to the Māori Land Court on 25 March 2019. Based in Wellington, he is the resident judge for the Tākitimu District of the Māori Land Court.



Judge Stone is the presiding officer for the Health Services and Outcomes Inquiry. Judge Stone has also been a Tribunal appointed mediator.

Justice Layne Harvey*

Ngāti Awa, Rongowhakaata, Te Aitanga a Māhaki, Te Whānau-ā-Apanui, Ngāti Kahungunu ki Te Wairoa

On 25 November 2021, Justice Harvey was sworn in as a judge of the High Court of New Zealand. He previously served as a Māori Land Court judge.



* Justice Harvey continues as presiding officer for the Taihape: Rangitikei ki Rangipō District Inquiry.

Judge Rachel Mullins

Ngāti Kahungunu, Kai Tahu

Judge Mullins was appointed to the Māori Land Court on 30 September 2021. Based in Hamilton, she is one of the resident judges for the Waikato-Maniapoto District of the Māori Land Court.



Judge Mullins is the presiding officer for the Kura Kaupapa Māori Urgent Inquiry.



The Tribunal panel for the North-Eastern Bay of Plenty District Inquiry outside Ōpeke Marae. From left: Dr Grant Phillipson, Basil Morrison, Prue Kapua, Professor Tom Roa, Dr Robyn Anderson, Judge Michael Doogan.

THE WAITANGI TRIBUNAL UNIT



Waitangi Tribunal Unit staff, 2023

The Ministry of Justice provides operational support to the Tribunal through the Waitangi Tribunal Unit. This meets the statutory requirement of the Ministry of Justice to “furnish such secretarial, recording, and other services as may be necessary to enable the Tribunal to exercise its functions and powers”.¹³

The Unit delivers a comprehensive range of services spanning the required processes to support the work of the Tribunal. This support includes administrative, inquiry planning, event management, registrarial, legal, research, and report writing.

The Waitangi Tribunal Unit has 65 staff at full capacity, spread across the Unit’s four teams:

- (a) **INQUIRY FACILITATION** – this team advises on the planning and delivery of inquiry processes, provides claimants and Tribunal panels advice on evidential and inquiry process matters, and facilitates the effective participation of all parties through inquiries up to the close of hearings.
- (b) **RESEARCH SERVICES** – this team assists Tribunal panels to plan and implement casebook research programmes, undertakes Tribunal-commissioned research, provides quality assurance on research, mapping, librarian services, and assists Tribunal panels to determine issues for inquiry.
- (c) **REPORT WRITING** – this team supports the planning and delivery of Waitangi Tribunal reports, assists Tribunal panels to draft their reports, and manages report publication.
- (d) **CLAIMS AND REGISTRARIAL:**
 - i) *Claims Coordination* – this team provides logistical support and advice relating to judicial conferences, hearings, and Tribunal panel meetings. It helps inquiry participants engage effectively with Tribunal processes, maintains and distributes documents filed on the records of inquiry, updates key database systems, is a key point of contact and provides administration support for Tribunal members.



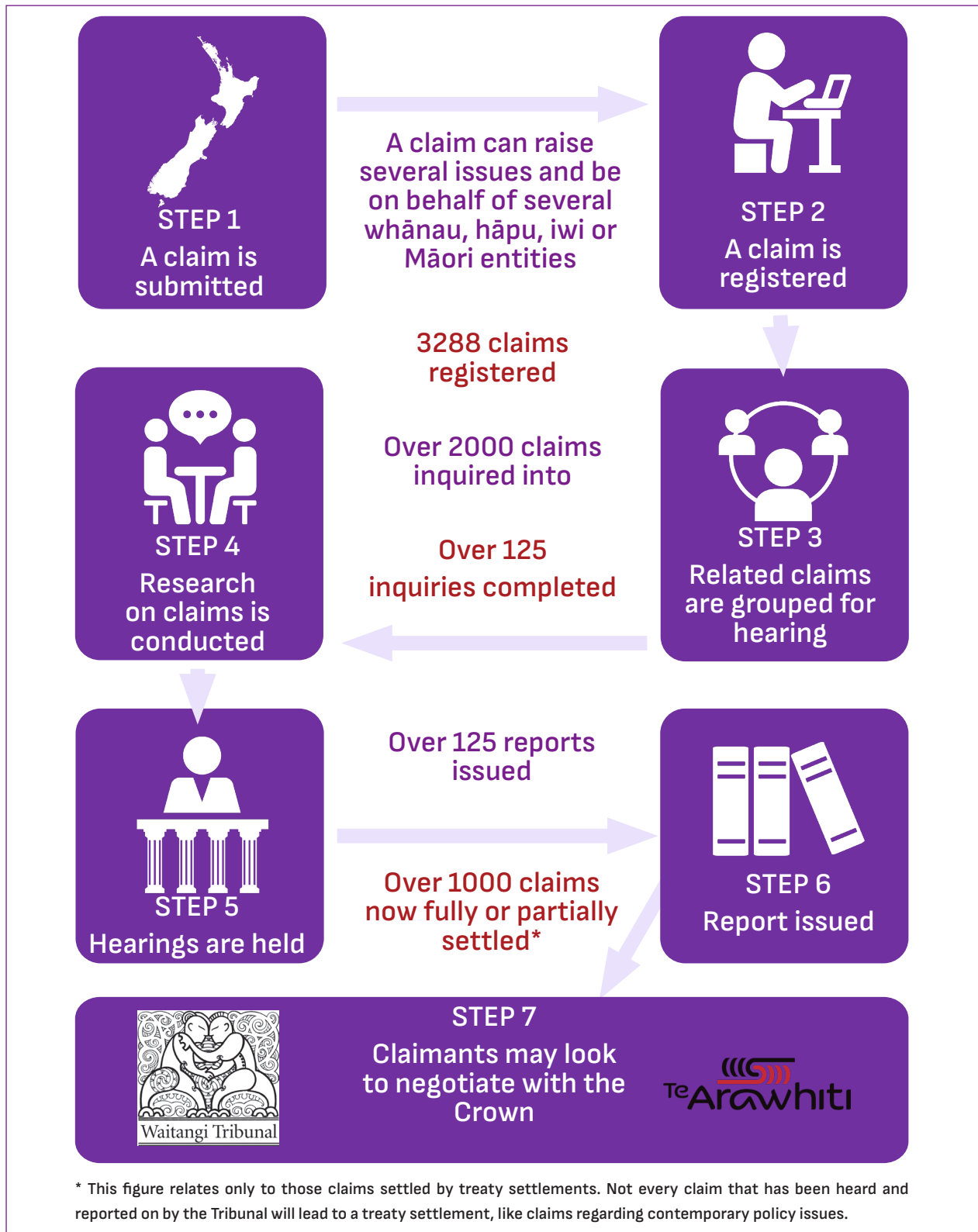
Porirua ki Manawatū panel and Tribunal Unit staff outside Tukorehe Marae in August 2023

ii) *Registrarial* – this team analyses claims submitted to the Tribunal for registration. It responds to public enquiries to undertake search requests for properties that may be subject to section 27B memorials under the State-Owned Enterprises Act 1986, completes section 4.9 reports for Legal Aid, and assesses applications that the Tribunal recommend land no longer be liable to resumption under section 8D of the Treaty

of Waitangi Act 1975. It also provides legal and procedural advice to presiding officers, Tribunal panels and Unit staff, manages urgency applications made to the Tribunal, and maintains oversight of the records of inquiry.

(e) **THE DIRECTOR'S OFFICE** – led by the Pae Matua/Director and the Deputy Director, this team is responsible for the overarching management and strategic oversight of the Unit.

THE TRIBUNAL PROCESS



THE TRIBUNAL'S STRATEGIC GOALS – NAVIGATING OUR WAY FORWARD



BACKGROUND

In July 2014, the Tribunal announced its strategic direction for the years 2014 – 2025. At the half-way point of the strategy in 2020, the Tribunal took stock to assess progress and review priorities and objectives. Our adjusted 2020 strategic goals (SG) are to:

- ▶ SG1 - Complete the final district inquiries by 2025
- ▶ SG2 - Complete or advance at least half of the 13 major kaupapa inquiries by 2025
- ▶ SG3 - Address the remaining historical claims that have fallen outside the district inquiry programme
- ▶ SG4 - Plan for addressing remaining contemporary claims that fall outside the kaupapa inquiries
- ▶ SG5 - Address claims granted urgency, including urgent applications for remedies.

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

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

CURRENT ENVIRONMENT

The challenge before the Tribunal today remains as it did in 2020: to provide an independent, impartial, public, and accessible forum in which Treaty claims can be heard and reported on in a timely manner.

Since the Tribunal updated its strategic direction in February 2020, the global pandemic has impacted the progress of the inquiry programme but also led to innovation in the way the Tribunal holds its hearings and events.

On 25 March 2020, Aotearoa New Zealand went into its first of a series of nationwide lockdowns to prevent the spread of the COVID-19 coronavirus. Public health and social restrictions on gatherings and other activities remained in place until September 2022. In response to COVID-19, the Tribunal began for the first time in 2020 to hold inquiry hearings and official events fully online via audio visual link. Whilst the impact of the global COVID-19 pandemic has caused significant delays in the inquiry programme since March 2020, over the past year the Tribunal has regained momentum and the 2023/2024 financial year is busy with six inquiries actively in hearings.

PROGRESS TO DATE: THE 2020 GOALS

STRATEGIC GOAL 1

In relation to SG1 and current district inquiries (see inquiries map, p16), the Tribunal is on track to report on and complete its inquiries in Te Paparahi o Te Raki and Taihape: Rangitikei ki Rangipō districts by the end of 2025. That leaves one long-running district inquiry, Porirua ki Manawatū, and two new district inquiries that commenced in 2019 (the Renewed Muriwhenua Land Inquiry and the North-Eastern Bay of Plenty Inquiry) still in progress.

STRATEGIC GOAL 2

Of the kaupapa inquiry programme, seven out of 13 inquiries have commenced (Military Veterans; Marine and Coastal Area (Takutai Moana) Act 2011; Health Services and Outcomes; Housing Policy and Services; Mana Wāhine; Justice System; and Constitutional, Self-government, and the Electoral System). By the end of 2025, all seven of these inquiries will be well advanced and nearing completion. Further kaupapa inquiries will likely commence between now and 2025.

The kaupapa inquiry programme adds considerable complexity to the Tribunal's work programme and has produced several innovations in Tribunal processes and procedures (see 'Spotlight on Innovations' p23).¹⁴

STRATEGIC GOAL 3

Some historical claims were filed after district inquiry hearings were completed or relate to a district for which the Tribunal has not held an inquiry (see inquiries map, p16). These remaining historical claims therefore fall outside the Tribunal's district and kaupapa inquiry programmes. These claims have been divided into geographical regions and a Tribunal 'standing panel' has been appointed to inquire into and report on claims in Region 1 (Southern North Island and South Island).¹⁵

STRATEGIC GOAL 4

The plan for addressing remaining contemporary claims that fall outside the district and kaupapa inquiries will be progressed once the majority of current kaupapa inquiries are well advanced. The Tribunal can then evaluate the remaining kaupapa inquiries and will be better placed to understand which contemporary claims fall outside the scope of the kaupapa inquiry programme.

STRATEGIC GOAL 5

Since 2020, the Tribunal has continued to address claims granted urgency, including urgent applications for remedies and priority inquiries. Claims are granted urgency in exceptional circumstances only and are a way for the Tribunal to prioritise the hearing of certain claims ahead of others (see 'Urgent Inquiries' p22). In an urgent application for remedies, the Tribunal is considering applications by claims that have been determined to be well-founded and seek recommendations for the return of Crown Forest Land, railways land, state-owned enterprise land, and/or land transferred to educational institutions (see 'Remedies Inquiries, p22).

THE JOURNEY AHEAD

The 2020 Strategic Direction highlighted the growing focus on current social and economic issues of concern in applications for an urgent hearing of claims. This has continued to be the case, alongside pre- and post-settlement issues. The Tribunal's statutory power to conduct mediations between the parties will likely play a greater role in this area. Granting urgent inquiries, however, will affect the speed at which the other goals can be advanced, as the Tribunal's resources may have to be redeployed. This could have an impact on the progress of other inquiries.

The Tribunal will be reviewing its strategic direction in 2024 and issuing a new strategic direction in 2025.

OUR INQUIRY PROGRAMME



Site visit at Lake Tangimata – part of a hearing for the Porirua ki Manawatū District Inquiry at Ngātokowaru Marae, Levin. From left: Joel de Boer, Dr Monty Soutar, Jacob Hapeta, Tim Stephens and Isabella Clarke.

The Treaty of Waitangi/Te Tiriti o Waitangi is central to everything that the Waitangi Tribunal does. As a standing commission of inquiry, the Waitangi Tribunal is tasked with determining whether Crown actions or omissions are in breach of Treaty principles.

The Tribunal conducts inquiries into claims. It categorises inquiries in several different ways. The main categories the Tribunal typically employs are:

- › District Inquiries
- › Kaupapa Inquiries
- › Urgent Inquiries
- › Remedy Inquiries
- › Priority Inquiries

The Tribunal, drawing on staff advice, projects and then annually reviews how it will allocate research and other resources to claims and inquiries based on the Tribunal's Strategic Direction 2020. The priorities for the Tribunal are as listed in this report on pages 13 to 14.

DISTRICT INQUIRIES

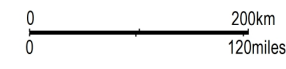
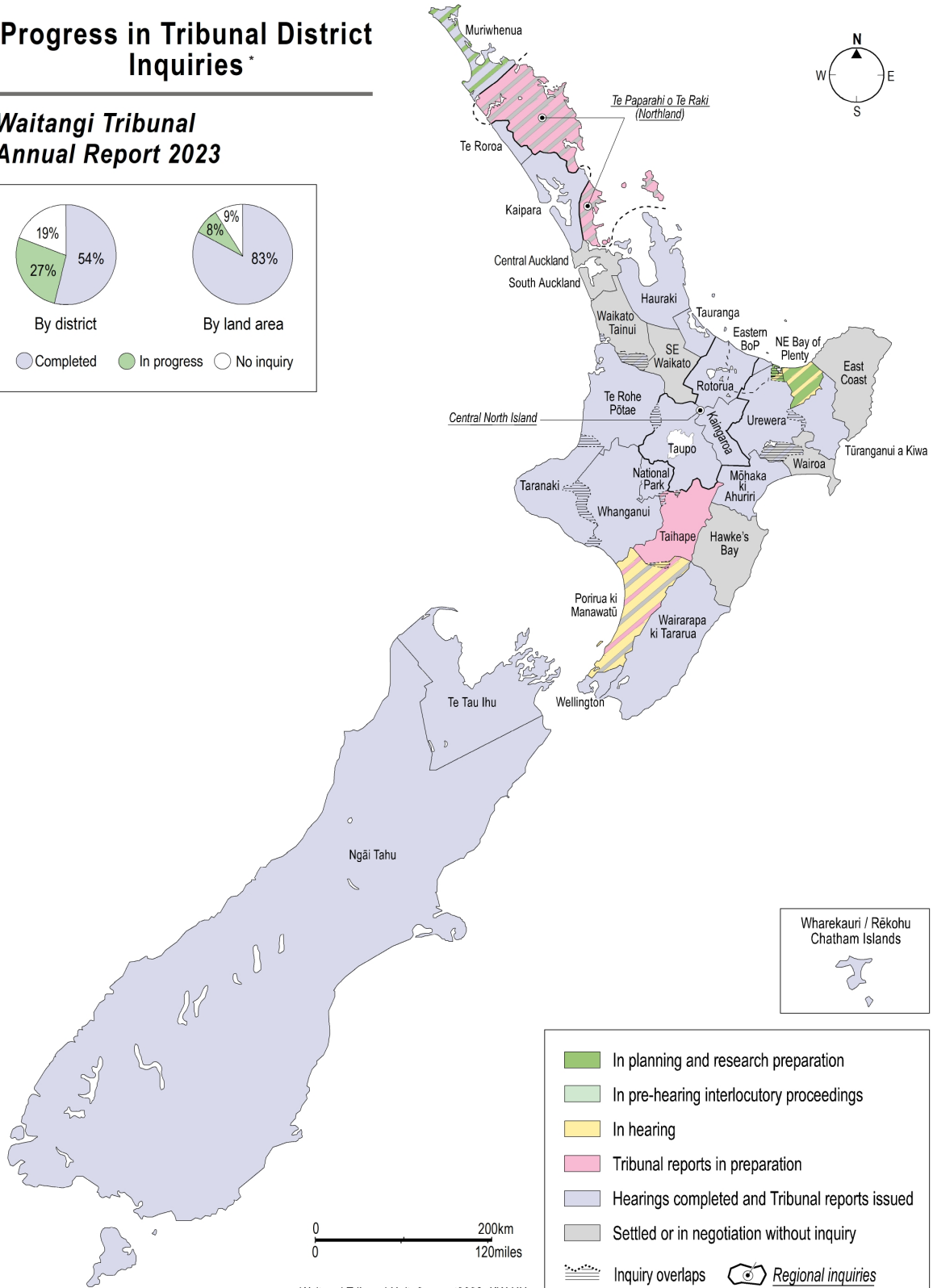
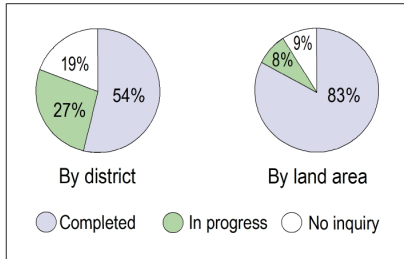
The Tribunal has 37 inquiry districts nationwide. Much of the Waitangi Tribunal's focus over the past 20 years has been on completing the district inquiry programme, which was designed to group several claims (mostly historical) brought by Māori on a district basis for joint hearing. The Tribunal has now completed its inquiries into the majority of the districts. Some districts have not had an inquiry due to the claimants choosing to negotiate a Treaty settlement directly with the Crown. The progress of district inquiries can be seen in the map on page 16. The remaining active district inquiries are described below.

NORTH-EASTERN BAY OF PLENTY DISTRICT INQUIRY (WAI 1750)

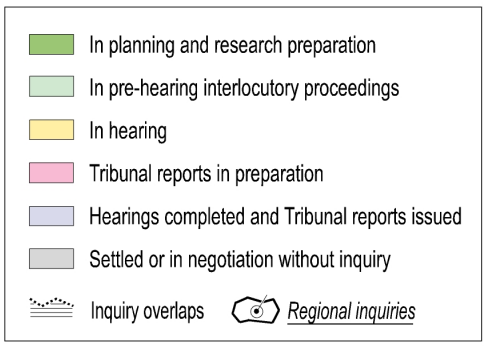
This is an inquiry into historical and contemporary claims relating to the north-eastern Bay of Plenty area where the Tribunal has not previously held a district inquiry. The inquiry consists of many of the historical Whakatōhea claims along with other groups in the district, including Ngāi Tai.

Progress in Tribunal District Inquiries*

Waitangi Tribunal Annual Report 2023



Waitangi Tribunal Unit, 2 August 2023, KW-NH



*The Tribunal has conducted inquiries in 30 districts, covering 83% of Aotearoa's land area.

Judge Michael Doogan is the presiding officer, along with Professor Tom Roa, Prue Kapua, Basil Morrison, Dr Robyn Anderson, and Dr Grant Phillipson as panel members.

- ▶ *Status:* The Tribunal has completed Ngā Korero Tuku Iho hearings to hear the oral histories of tangata whenua. The Crown and Whakatōhea have signed a Treaty settlement that is currently before Parliament. The settlement provides for the Tribunal to complete its inquiry and release a report on the claims on the basis it cannot make recommendations on historical Whakatōhea claims. The Tribunal is continuing its inquiry and is currently in forward planning for the remainder of the inquiry.

PORIRUA KI MANAWATŪ DISTRICT INQUIRY (WAI 2200)



Map of Porirua ki Manawatū inquiry district

Approximately 117 claims are being inquired into as part of the Porirua ki Manawatū District Inquiry (Wai 2200). The inquiry is focused on the claims of Muaūpoko, Te Ātiawa/Ngāti Awa ki Kāpiti and Ngāti Raukawa and affiliated groups, which include Ngāti Kauwhata, Ngāti Wehiwehi, Ngāti Tukorehe, Ngāti Whakaterere, and the hapū of Te Reureu.¹⁶

Chief Judge Dr Caren Fox is the presiding officer, along with Dr Monty Soutar, Tania Simpson, and Dr Grant Phillipson as panel members.

- ▶ *Status:* The Tribunal has released several reports on different issues and groups within the inquiry.¹⁷ The Tribunal is currently completing the claims relating to Ngāti Raukawa and affiliated groups and will next hear remaining inquiry-wide matters.

TAIHAPE: RANGITĪKEI KI RANGIPŌ DISTRICT INQUIRY (WAI 2180)



Map of Taihape: Rangitīkei ki Rangipō inquiry district

The Tribunal is currently inquiring into 46 claims as part of the Taihape: Rangitīkei ki Rangipō District Inquiry (Wai 2180). About a dozen of these claims have been made on behalf of the iwi, hapū and whānau of Mōkai Pātea: Ngāti Hauiti, Ngāti Tamakōpiri, Ngāti Whitikaupeka, Ngāi Te Ohuake, Ngāti Paki and Ngāti Hinemanu.

Justice Layne Harvey is the presiding officer, along with Professor Tā Pou Temara, Dr Paul Hamer, and Dr Monty Soutar as panel members.

- ▶ *Status:* Hearings have completed and the Tribunal is progressing its report. The Tribunal will first release a priority report on landlocked lands and then finish its wider district inquiry report. The inquiry panel are also considering the issue of customary interests in the Kāweka and Gwavas Crown Forest Licensed Lands.

RENEWED MURIWHENUA LAND INQUIRY (WAI 45)

The Muriwhenua district is the northern-most point of Aotearoa. Muriwhenua iwi include Ngāti Kahu, Te Paatu, Te Rarawa, Ngāi Takoto, Te Aupōuri, and Ngāti Kuri. The current inquiry is considering the claims of Ngāti Kahu, Te Paatu, and remaining unsettled groups.



Source: Gadflum

Karikari Beach on Karikari Peninsula. Ngāti Kahu's rohe is centered on the peninsula and Doubtless Bay.

The Tribunal originally completed a district inquiry in this area in 1998. Following that, some groups within Muriwhenua have settled their claim, while others remain. Ngāti Kahu claimant groups sought binding recommendations from the Tribunal for the return of certain land under the Treaty of Waitangi Act 1975. After extensive litigation including judicial review, the Tribunal has initiated a further district inquiry into the claims currently before it, to inform a remedies inquiry into whether binding recommendations should be made by the Tribunal.

Judge Carrie Wainwright is the presiding officer, along with Tania Simpson, Professor Tom Roa and Dr Ruakere Hond as panel members.

- › *Status:* The inquiry is currently in the research phase. Once further research reports are completed the Tribunal will proceed to hearings.

INQUIRY INTO REMAINING HISTORICAL CLAIMS (STANDING PANEL INQUIRY) (WAI 2800)

This inquiry is being conducted by a standing panel which will inquire into the remaining historical claims that have been filed in districts after inquiries had been completed or which fell outside of the district inquiries and have not been included in a settlement. The first of six regions for inquiry is the Southern North Island and South Island (Wai 2800).

Judge Wilson Isaac is the presiding officer, along with Dr Robyn Anderson and Dr Monty Soutar as panel members.¹⁸

- › *Status:* The Tribunal is currently completing its claims assessments for region one to determine the eligible claims for inquiry. It is also considering requests for participation by other claimant groups to be heard in Region One.

KAUPAPA INQUIRIES

Kaupapa (thematic) inquiries are not specific to any district. They deal with nationally significant claim issues affecting Māori as a whole or a section of Māori in similar ways. From the 1990s, the Tribunal prioritised the hearing of claims in district inquiries to assist the Crown and claimants in settling historical claims. As a result, some kaupapa claims have been waiting for many years to be heard.

In April 2015, a memorandum initiating the kaupapa inquiry programme was issued by the then Chairperson, Chief Judge Wilson Isaac. A second memorandum updating and refining the kaupapa process was issued in March 2019. The kaupapa inquiry topics and order in which they are scheduled for inquiry are:

1. Military veterans
2. Health services and outcomes
3. Marine and Coastal Area (Takutai Moana) Act 2011
4. Mana wāhine
5. Housing policy and services
6. Justice system
7. Constitution, self-government, and the electoral system
8. Education services and outcomes
9. Social services and social development
10. Economic development
11. Identity and culture
12. Natural resources and environmental management
13. Citizenship rights and equality

From this list, the Military Veterans, Health Services and Outcomes, Marine and Coastal Area (Takutai Moana), Mana Wāhine, Housing Policy and Services, the Constitution, Self-government and the Electoral System, and the Justice System inquiries have commenced. Also, some kaupapa



Source: NZDF website

Hearing One of the Military Veterans Kaupapa Inquiry at Tūnuhopū Marae

issues have been granted priority for hearing within the kaupapa inquiry programme, like claims in respect of the Marine and Coastal Area (Takutai Moana) Act 2011, and Freshwater and Geothermal Resources.

MILITARY VETERANS (WAI 2500)

The Military Veterans Kaupapa Inquiry (Wai 2500) is hearing all claims involving past military service undertaken directly for or on behalf of the Crown in right of Aotearoa or, in earlier colonial times, for or on behalf of the imperial Crown in Aotearoa. This extends to all types of military service, whether operational or routine, whether in time of war or peace, and whether at home or abroad.

Judge Wilson Isaac is the presiding officer, along with Professor Tā Pou Temara, Dr Grant Phillipson, Dr Monty Soutar, and Dr Hana O'Regan as panel members.

- › *Status:* Oral evidence hearings were held in 2016 in Gisborne, Hawkes Bay, Northland, Whakatāne, and Christchurch, during which the Tribunal heard evidence from surviving ex-servicepeople and their whānau. In 2023, the Tribunal recommenced hearing technical and claimant evidence, with a hearing in Rotorua.

HEALTH SERVICES AND OUTCOMES (WAI 2575)

The Health Services and Outcomes Inquiry is hearing all claims concerning grievances relating to health services and outcomes and which are of national significance. The inquiry has proceeded on a phased and thematic basis, with health-related claim issues to be heard in stages according to priority. Stage one, which concluded in March 2019, inquired into and reported on aspects of primary healthcare. Stage two will cover three priority areas encompassing mental health (including suicide and self-harm), Māori with disabilities, and issues of alcohol, tobacco, and substance abuse for Māori. This stage has commenced hearing on all claims relating to disability as the first part of the stage two inquiry.

Judge Damian Stone is the presiding officer, along with Professor Linda Tuhiwai Smith, Tania Simpson, and Professor Tom Roa as panel members.

- › *Status:* The inquiry is currently progressing and is close to completing the hearings on claims relating to disability.



Hearing Five of the Disability Phase of the Health Services and Outcomes Inquiry at Papakura Marae. From left: Tania Simpson, Judge Damian Stone and Professor Linda Tuhiwai Smith.



Mana Wāhine Tribunal panel at a Tūāpapa Hearing at Waiwhetu Marae, Lower Hutt. From left: Kim Ngarimu, Professor Linda Tuhiwai Smith, Judge Sarah Reeves, Dr Robyn Anderson, and Dr Ruakere Hond.

MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT (WAI 2660)

The inquiry concerns claims relating to the Marine and Coastal Area (Takutai Moana) Act 2011. The Tribunal has completed hearings and issued a stage one report in June 2020, on procedural and funding issues under the statutory regime. The Tribunal has also now completed stage two hearings concerning the policy and practice of the legislation.

Judge Miharo Armstrong is the presiding officer, along with Professor Rawinia Higgins, Professor Tā Pou Temara, and Ron Crosby as panel members.

- › *Status:* The inquiry is in the final stages of completing its stage two report.¹⁹

MANA WĀHINE (WAI 2700)

The Mana Wāhine Kaupapa Inquiry is hearing claims which allege prejudice to wāhine Māori as a result of Treaty breaches by the Crown. These claims extend across many fields of Crown policy, practice, acts and omissions. They raise both historical and contemporary issues.

Judge Sarah Reeves is the presiding officer, along with Dr Ruakere Hond, Dr Robyn Anderson, Kim Ngarimu, and Professor Linda Tuhiwai Smith as panel members.

- › *Status:* The inquiry has completed its initial hearings to provide a tūāpapa (foundation) for the wider inquiry. These hearings focused on the tikanga of mana wāhine and pre-colonial understandings of wāhine in te ao Māori. The inquiry is now progressing its research programme with the next stage of hearings to commence in 2024.

HOUSING POLICY AND SERVICES (WAI 2750)

The Housing Policy and Services Inquiry is hearing claims with grievances concerning housing policy and services. Many of the claims which raise grievances in relation to housing issues have been brought on behalf of whānau, hapū and iwi from across the nation. Judge Coxhead is the presiding officer, along with Dr Paul Hamer, Prue Kapua, and Basil Morrison as panel members.

- › *Status:* The inquiry began with a prioritised inquiry into homelessness. The Tribunal has now completed hearings on that issue and in May 2023 released *Kainga Kore: the Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness*. Research for the wider inquiry is almost complete and the Tribunal is progressing towards commencing hearings on the remaining claim issues.



Claimant and rongoā Māori expert Aorangi Kawiti gave evidence of her own experience of homelessness at hearings at Te Puea Marae, Tāmaki Makaurau.

TE RAU O TE TIKA – THE JUSTICE SYSTEM (WAI 3060)

The inquiry is into claims relating to the justice system. The Tribunal commenced with a priority inquiry and report into claimant funding (Whakatika ki Runga) issued in February 2023.

Judge Carrie Wainwright is the presiding officer, along with Dr Hana O'Regan, Dr Ruakere Hond, and Dr Paul Hamer as panel members.

- › *Status:* The Tribunal has commissioned pou tikanga (tikanga experts) - Ruth Smith, Paraone Gloyne, Rahui Papa and Moe Milne - to develop guidelines that outline a tikanga for justice that will inform how the inquiry should be conducted in accordance with tikanga Māori. The pou tikanga, along with the inquiry panel, have held wānanga with claimants and Māori more broadly to understand their experiences in the justice system and inform the guideline they will produce.

CONSTITUTIONAL (WAI 3300)

The inquiry commenced on 22 December 2022. The inquiry concerns claims which raise issues relating to the constitution, sovereignty and self-government, the electoral system and local government.

Chief Judge Dr Caren Fox is the presiding officer, along with Prue Kapua, Professor David Williams, Kevin Prime, and Dr Grant Phillipson as panel members.

- › *Status:* The Tribunal has commissioned pou tikanga and pou ture Pākeha (legal experts) to develop a guideline for a process of how to carry out the inquiry and will be holding wānanga with the claimants.

NATIONAL FRESHWATER AND GEOTHERMAL RESOURCES (WAI 2358)

The inquiry concerns Māori proprietary rights in freshwater bodies and geothermal resources. Stage one of the inquiry looked at Māori rights and interests in fresh water and the potential impact of the imminent sale of shares in one of the four state-owned power companies. Stage two focused on the Crown's freshwater management regime and its reforms. The Tribunal has reported on stages one and two. The Tribunal also held a priority inquiry into appointments to committees under the new proposed Natural and Built Environments Bill, issuing an interim report in September 2022. Stage three of the inquiry will focus on Crown acts and omissions with respect to Māori rights and interests in geothermal resources.

Judge Wilson Isaac is the presiding officer along with Professor Tā Pou Temara, Dr Grant Phillipson, Ron Crosby, and Dr Robyn Anderson as panel members.

- › *Status:* The inquiry is currently progressing towards commencing stage three hearings in 2024.



Te Ataakura Pewhairangi giving evidence for Kura Kaupapa Māori o Aotearoa for hearing one of the Kura Kaupapa Māori Urgent Inquiry at Hoani Waititi Marae

URGENT INQUIRIES

An urgent inquiry is where the Tribunal decides to urgently inquire into a claim, part of a claim, or a group of claims that are not currently scheduled for hearing. The Tribunal will grant an application for an urgent inquiry only in exceptional cases based on strict criteria.

KURA KAUPAPA MĀORI URGENT INQUIRY (WAI 1718)

The claim has been brought by Te Rūnanga Nui o ngā Kura Kaupapa Māori and concerns the Crown's engagement with and policy applying to Kura Kaupapa Māori through the 'Tomorrow's Schools Reforms' process.

Judge Rachel Mullins is the presiding officer, along with Professor Susy Frankel, Professor Rawinia Higgins, Derek Fox, and Herewini Te Koha.

- › *Status:* The Tribunal has completed hearings and is preparing its report. This will be the Tribunal's first report primarily in te reo Māori.

REMEDIES INQUIRIES

A remedies inquiry can only occur after the Tribunal finds that a claim submitted to it under Section 6 of the Treaty of Waitangi Act 1975 is well-founded. These inquiries will generally be initiated by an urgent remedies application which, if granted, will lead to a remedies inquiry being commenced. The Tribunal may, if it thinks fit, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future. In such a case, the claimants may ask the Tribunal to make general recommendations or, if appropriate, binding recommendations in respect of Crown Forest Land, railways land, state-owned enterprise land, and/or land transferred to educational institutions.

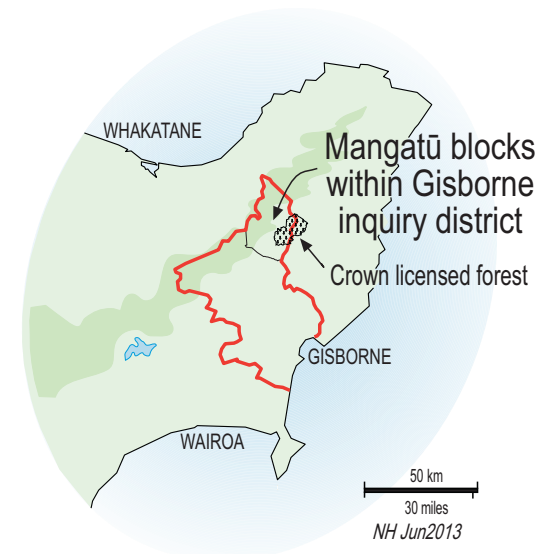
RENEWED MURIWHENUA LAND INQUIRY (WAI 45)

(As outlined previously in 'District Inquiries'.)

Judge Carrie Wainwright is the presiding officer, along with Tania Simpson, Professor Tom Roa, and Dr Ruakere Hond as panel members.

- › *Status:* The consideration of the remedies applications are currently on hold until the district inquiry phase is completed.

MANGATŪ REMEDIES INQUIRY (WAI 814/1489)



Mangatū Remedies Inquiry district map

The inquiry concerns the application for binding recommendations from groups with well-founded claims in the Tūranga District Inquiry, namely Te Aitanga-ā-Māhaki, Ngā Uri o Tamanui, and Te Whānau ā Kai.

Judge Stephanie Milroy is the presiding officer, along with Professor Tom Roa, Dr Ann Parsonson, and Tim Castle as panel members.

- › *Status:* The Tribunal has completed hearings and issued its report. The Tribunal's determination is currently under judicial review.

SPOTLIGHT ON INNOVATIONS



Hearing Seven of the Health Services and Outcomes Kaupapa Inquiry, Papakura Marae Tāmaki Makaurau, 25 August 2023

The Tribunal has a broad discretion to adapt its process and procedure to meet the needs of those who come before it.²⁰ In the Strategic Direction 2014 - 2025, the Tribunal signalled that the upcoming shift from district inquiries to a kaupapa inquiry programme would require new modes of inquiry process and procedure to best service the needs of claimants and stakeholders in a sustainable and efficient manner. Since the launch of the kaupapa inquiry programme in 2015, the Tribunal has seen a number of innovations in its process and procedure.

ACCESSIBILITY PROTOCOLS

The Health Services and Outcomes Kaupapa Inquiry's accessibility protocol is one such example. In September 2021, the Health inquiry Tribunal adopted an accessibility protocol for the disability phase of the inquiry. The protocol sets out guidance and procedures to ensure accessibility for Tangata Whaikaha and Māori with lived experience of disability. Examples include accessibility requirements for venues, shorter hearing days, regular micro-breaks, the translation of documents into accessible formats (such as Braille, Easy-Read, CD audio and New Zealand Sign Language (NZSL) video (with captions), the

introduction of audio describers, captioners, NZSL interpreters and trilingual interpreters). This has led to the Tribunal reviewing and transforming its processes and conduct of hearings, with other inquiries like Te Rau o te Tika: Justice System Inquiry adopting processes to ensure we are as accessible as reasonably possible.

TŪĀPAPA HEARINGS

In February 2021 the Mana Wāhine Inquiry commenced the tūāpapa hearing phase of the inquiry, which explored the tikanga of mana wāhine and the pre-colonial understanding of wāhine in te ao Māori. Evidence heard across the six tūāpapa hearings is intended to form the baseline against which Crown breaches of Te Tiriti can be considered for the balance of the inquiry. The Tribunal intends to publish an online index to the 126 briefs of evidence presented by witnesses. The intention is for the index to make the evidence heard during this stage more accessible to claimants, wāhine Māori, researchers, government officials and interested members of the public.

As part of the research phase of the inquiry the Tribunal also commissioned the Takapou Whāriki research project to gather oral accounts by wāhine Māori. The Takapou Whāriki research



Mana Wāhine Inquiry panel at the Tūāpapa Hearing at Waiwhetū Marae, Lower Hutt. From left: Kim Ngarimu, Judge Sarah Reeves, Dr Robyn Anderson, and Dr Ruakere Hond.

project recognises the importance of mātauranga held by wāhine Māori. The project engages a broad selection of wāhine Māori participants of diverse ages, workforces, lifestyles, geographic locations, and wāhine Māori gender identities and sexualities, as well as those involved in the inquiry. The project is the first of its kind for the Tribunal to capture video footage and transcripts of the mātauranga and experiences of wāhine Māori as part of a research project.

POU TIKANGA

In the Justice System Inquiry the presiding officer appointed four pou tikanga and held a series of wānanga across May and June 2023. The purpose of the wānanga was to inform the Tribunal's understandings of the foundational principles of tikanga and justice. The role of the pou is to help the Tribunal understand how best to run an inquiry in a way that conforms with tikanga. The wānanga and appointment of pou has been a first



Panel and pou tikanga at a Wānanga at Ōtiria Marae. From left: Dr Ruakere Hond, Ruth Smith, Paraone Gloyne, Dr Hana O'Regan, Dr Paul Hamer, Judge Carrie Wainwright, Rahui Papa, and Moe Milne.



The Kura Kaupapa Māori Urgent Inquiry panel at Hearing Two at Te Kura Kaupapa Māori o Ngā Mokopuna, Seatoun. From left: Herewini Te Koha, Professor Rawinia Higgins, Judge Rachel Mullins, Professor Susy Frankel, and Derek Fox.

for the Tribunal in holding wānanga engaging not just claimants but Māori communities and their lived experience of the Justice system.

Similarly, in the recently commenced Constitutional Inquiry, four pou tikanga and three pou ture Pākehā have been appointed to help guide the Tribunal to design, along with the claimants and the Crown, the Tribunal's process for the inquiry. The pou will produce a report on a tikanga for the inquiry and a process that would be compliant with the principles of the Treaty of Waitangi for hearing the claims.

TE REO MĀORI

Finally, the first Tribunal report primarily in te reo Māori is currently in preparation for the urgent inquiry into the Kura Kaupapa Māori (Dewes) claim. Mātanga reo (Māori language specialists) have been engaged to attend the hearings and assist the panel with drafting its report

WAITANGI TRIBUNAL COMMISSIONED RESEARCH

Waitangi Tribunal inquiries are based on a robust examination of evidence. To ensure the Tribunal is well informed about the issues covered by a claim, new research may need to be carried out. Research for Tribunal inquiries can be commissioned by the Tribunal, claimants, the Crown or third parties. Technical research (research undertaken by experts) is often carried out by Waitangi Tribunal Unit staff and contractors commissioned by the Tribunal, Crown Forestry Rental Trust researchers commissioned on behalf of claimants, and researchers commissioned by the Crown.

For district and kaupapa inquiries, all technical research is collated into a collection of reports and other evidence collectively called a ‘casebook’ prior to the commencement of hearings. This evidence is entered on the record of inquiry and distributed to the Crown and all claimants participating in the inquiry. For the 2022/23 financial year, there was significant activity across the Tribunal’s commissioned research programme for district and kaupapa inquiries. As set out on page 27, seven commissioned research reports were commenced, four were underway and seven were completed.²¹



Te Tūāpapa o Te Tika Wānanga at Otiria Marae

TRIBUNAL-COMMISSIONED RESEARCH COMMENCED

INQUIRY	REPORT	COMMISSIONEE(S)
North-Eastern Bay of Plenty (Wai 1750)	Te Ūpokorehe Customary Landscape Economic Development, Social Services and Cultural Impacts in the North-Eastern Bay of Plenty Inquiry District	P. Husbands T. Walzl
Mana Wāhine	Wāhine Māori Access to Representation, Leadership, Governance, and Decision-Making Roles in the Public Sector from 1990 to 2020 Contemporary Justice Issues for Wāhine Māori: Equity and Disparities in Wellbeing from 1990 to 2020 Takapou Whāriki Equity and Disparities in Wellbeing for Wāhine Māori from the 1950s to 2000 Historical Overview: Recognition of the Roles, Status, Knowledge, and Rangatiratanga of Wāhine Māori from 1840 to 1950 Contemporary Economic Issues for Wāhine Māori: Recognition of Roles, Status, and Knowledge from 1990 to 2020	A. Te One H. Rattray-Te Mana H. Potter, S. Simmonds and J. Hutchings L. Greaves and S. Douglas R. Wolfgramm T. Wolfgramm

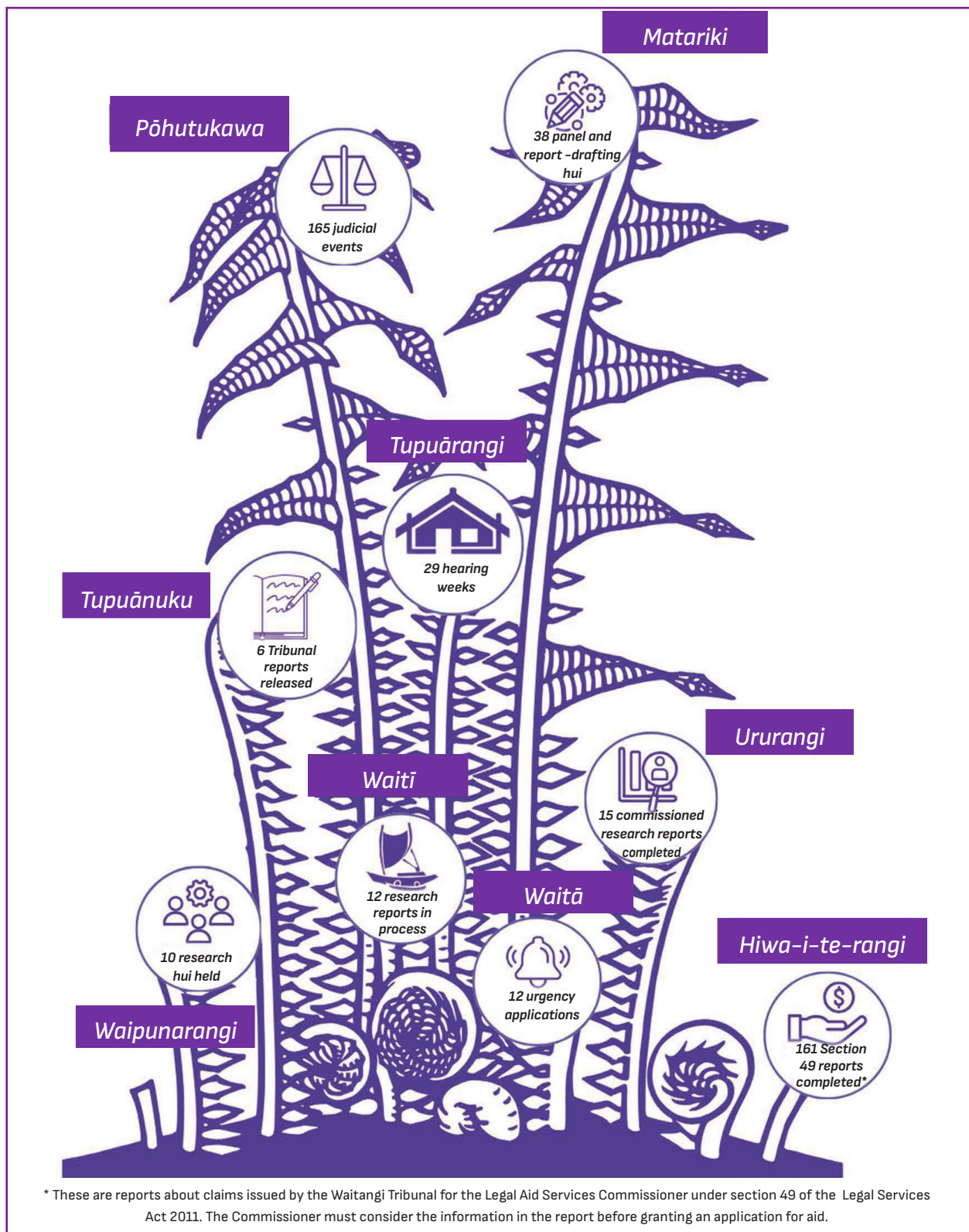
TRIBUNAL-COMMISSIONED RESEARCH UNDERWAY

INQUIRY	REPORT	COMMISSIONEE(S)
Renewed Muriwhenua Land (Wai 45)	Muriwhenua Environmental Issues 1840-2022	T. Rother
North-Eastern Bay of Plenty (Wai 1750)	Tribal Connections, Settlement Patterns and Resource Use in the North-Eastern Bay of Plenty Prior to 1860	D. Williams
Housing Policy and Services (Wai 2750)	Social Housing and Special Housing Needs for Māori, 1991-2021 ²²	S. Groot

COMPLETED TRIBUNAL-COMMISSIONED RESEARCH

INQUIRY	REPORT	COMMISSIONEE(S)
Renewed Muriwhenua Land (Wai 45)	Social Issues Report for the Renewed Muriwhenua Land Inquiry 2002-2020	B. Whiley
North-Eastern Bay of Plenty (Wai 1750)	Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho' War and Raupatu 1840-1871	J. Luiten T. Walzl
Housing Policy and Services (Wai 2750)	The Private Rental Market and Māori 1991-2021 Māori Housing and Government Policy 1935-1990 Housing on Māori Land c. 1870 -2021 Māori Home Ownership 1991-2021	E. Rowe M. Nichol and T. Gassin E. Arbury and F. Cram C. Waldegrave

A SNAPSHOT OF THE WORK OF THE TRIBUNAL, 2022 - 2023



SUMMARIES OF REPORTS RELEASED 2022 – 2023

MOTITI: REPORT ON THE TE MOUTERE O MOTITI INQUIRY

On 22 March 2022, the Waitangi Tribunal released *Motiti: Report on the Te Moutere o Motiti Inquiry*. The urgent inquiry report addresses a claim that the Crown breached the Treaty of Waitangi by failing to recognise the tangata whenua of Motiti Island as an independent tribal group warranting their own Treaty settlement. Instead, it was alleged, the Crown wrongly assumed the tangata whenua of Motiti were covered by the Ngāti Awa settlement.

Hearings were held in Whakatāne and Tauranga from May 2018 to September 2019. The panel comprised Judge Miharo Armstrong (presiding officer), Dr Ann Parsonson, Tania Simpson, and Dr Tom Roa.

The inquiry focused on a process the Crown undertook, in 2015 and 2016, to assess the claimants' assertion that Motiti's tangata whenua were distinct from Ngāti Awa, and that their Treaty claims thus remained unsettled. Termed the 'kinship review', this process had the related aim of clarifying who the Crown should engage with in relation to Motiti, by identifying which tribal group/s have authority to speak for the island. Though the Crown reached no final conclusions in its review, it made preliminary findings that did not support the claimants' assertions. The claimants alleged the review was flawed and its findings were incorrect, perpetuating what they saw as the Crown's enduring failure to recognise their identity and distinct rights on Motiti.

The Tribunal granted urgency on the basis that the claimants, Ngā Hapū o te Moutere o Motiti, could suffer significant and irreversible prejudice if the Crown had misunderstood their tribal identity and status. Without Crown recognition, they could not participate in Treaty settlement negotiations and any resulting settlement instruments affecting Motiti.

The central inquiry issue was therefore whether the Crown, through its kinship review, properly informed itself of the identity of the tangata whenua of Motiti. To address this issue, the Tribunal first had to consider the more fundamental question of who the tangata whenua are – a relatively uncommon exercise for the Tribunal, which it agreed to do at the claimants'



and the Crown's express request. Another preliminary question to determine was whether the Ngāti Awa settlement covered Ngā Hapū o te Moutere o Motiti.

The Crown supported the inquiry, having been unable to reach firm conclusions on the crucial question of tribal identity in its kinship review.

The question of tribal identity and tangata whenua status on Motiti was highly contested among the Māori parties to the inquiry. The claimants argued that Ngāi Te Hapū (the descendants of Te Hapū) were the tangata whenua. Several interested parties argued that Te Patuwai were the tangata whenua, and that Te Patuwai were part of Ngāti Awa.

On the preliminary questions for determination, the Tribunal found that

- › Te Patuwai are the tangata whenua of Motiti, Te Patuwai is a unified tribal identity that affiliates to Ngāti Awa, and Ngāi Te Hapū is an integral part of the Te Patuwai identity. Te Whānau a Tauwhao, a hapū of Ngāi Te Rangī, are also tangata whenua of Motiti.
- › The Ngāti Awa Claims Settlement Act 2005 settled Motiti Island historical claims based on descent from the ancestor Te Hapū.



Claimant Graeme Hoete (driving tractor) with other inquiry participants and tangata whenua during the Tribunal's site visit to Motiti Island, 18 May 2018

On the central inquiry issue, the Tribunal found that the Crown properly assessed the identity of the island's tangata whenua through its kinship review. The Tribunal therefore made no finding of Treaty breach. However, it considered aspects of the review process were flawed – especially, the way the Crown initially engaged with the claimants and other groups – and offered suggestions on how it could have been improved.

The Tribunal noted that, as the kinship review concerned claims about tribal identity and affiliation – matters of fundamental importance in te Ao Māori – it had implications not only for the claimants, but for other individuals and groups also. As such, the Tribunal thought the Crown should have approached the review in a more culturally appropriate way – one that prioritised the need for discussion between the groups concerned.

As it was, the Crown failed to fully engage with all groups at the outset; to invite all groups to participate in the process's initial design; and to support and engage in a tikanga-based process to resolve the questions under review, instead opting to make its own assessment.

Despite the review process's flaws, the Tribunal found the Crown acted appropriately overall. It ultimately recognised the need to be more inclusive and took corrective action, including meeting affected groups earlier than planned, and supporting all groups to discuss the issues with each other. It also conducted the review in a largely open and transparent way. In these and other respects, the Tribunal found the Crown acted in good faith, and ultimately met its duty of consultation to all groups.

THE INTERIM REPORT ON MĀORI APPOINTMENTS TO REGIONAL PLANNING COMMITTEES

On 1 September 2022, the Tribunal released *The Interim Report on Māori Appointments to Regional Planning Committees*. The report is part of the ongoing National Freshwater and Geothermal Resources Claims Inquiry (Wai 2358). It addresses Māori representation on the regional planning committees proposed under the future Natural and Built Environments Act (NBA) and Spatial Planning Act.

The focus of the Tribunal's inquiry was whether the approach proposed by the Crown was consistent with the principles of the Treaty. The Tribunal found the Crown's proposal that iwi and hapū should lead and facilitate the process to decide on an appointing body was 'Treaty compliant at a high level of principle', although not all the detail had been decided at the time of the hearing. The Tribunal also found the Crown's proposal for a legislative requirement that iwi and hapū engage with their members and with relevant holders of rights and interests, and keep a record of that engagement, was Treaty compliant at a high level of principle. Again, details had not been finalised at the time of the hearing. The Tribunal did not consider that the Crown should pause at this late stage and go back to full consultation with Māori about the details of the proposed appointments process.

Beyond these findings, the Tribunal was unable to say whether the Crown's proposed process is Treaty compliant overall. This is because the bespoke Resource Management Act 1991 arrangements negotiated through Treaty settlements and other processes still need to transition into the new system. Those arrangements would potentially trump or even displace the proposed appointments processes in some regions.

The inquiry panel comprised Chief Judge Wilson Isaac (presiding officer), Dr Robyn Anderson, Ron Crosby, Dr Grant Phillipson, and Professor Sir William Te Rangiuā (Pou) Temara.

WAIKANAĒ: REPORT ON TE ĀTIAWA/NGĀTI AWA CLAIMS

On 14 December 2022, the Tribunal released *Waikanae: Report on Te Ātiawa/Ngāti Awa Claims*. This report, the third issued so far in the Porirua ki Manawatū District Inquiry (Wai 2200), considered 17 claims brought on behalf of Te Ātiawa/Ngāti



Stain glass window at St Luke's Church showing Wi Parata and Octavius Hadfield

Awa individuals, whānau, hapū, and iwi organisations. These concerned land, cultural sites, and resources in the iwi's traditional rohe on the west coast of the North Island, which covers modern-day Waikanae and Paraparaumu, with interests as far south as Paekākāriki.

The Tribunal heard these claims over the course of five hearings across 2018 and 2019. It visited several sites of importance to Te Ātiawa/Ngāti Awa, including Kenakena Pā, where 20 Waikanae rangatira signed the Treaty in May 1840. The Tribunal also visited St Luke's Church and Te Ātiawa/Ngāti Awa rangatira Wi Parata's grave at Ruakohatu urupā. A leader in the Kotahitanga Parliament movement, Wi Parata was also the plaintiff in the landmark case *Wi Parata v Bishop of Wellington* (1877), where Justice Prendergast infamously described the Treaty as a 'simple nullity'.

In an 1846 exchange of letters with Te Ātiawa/Ngāti Awa rangatira, Governor George Grey promised amity and collaboration with the iwi, noting Queen Victoria's wishes that he do 'all in [his] power' to ensure their happiness and safety. Despite these assurances, during the nineteenth and twentieth centuries, Crown acts and omissions had a devastating impact on Te Ātiawa/Ngāti Awa, resulting in their virtual landlessness today.

The Crown conceded that its past acts, including the individualisation of collective Māori land titles, which made Māori land susceptible to fragmentation and sale, had breached the Treaty. The Crown also conceded that it undermined tribal structures, and that its actions left Te Ātiawa/Ngāti Awa virtually landless. The Tribunal

accepted these concessions and identified several other important Treaty breaches.

The Tribunal found that the Crown breached the Treaty in its 1858 and 1859 purchases of the Wainui and Whareroa blocks by failing to inquire into who owned the land before purchasing, by imposing the purchases on non-sellers without consent, and by making inadequate reserves for their present and future needs. In the 1860s, the Crown also breached the Treaty when it threatened Waikanae tribal leaders with land confiscation if they continued to support the Māori King movement.

The Crown's native land laws between 1870 and 1900 breached Treaty principles. These laws converted tribal customary rights into a list of individuals. Those individuals had the power to partition or sell but no power at the time to establish a body to manage their lands collectively. The Crown failed to give a proper remedy when Te Ātiawa/Ngāti Awa petitioned Parliament about their grievances in the 1890s. Also, the Crown failed to give Māori landowners the same access to cheap development loans as non-Māori. As a result of these breaches, a rapid loss of land occurred between 1891 and 1930, by which point most Te Ātiawa/Ngāti Awa owners were virtually landless. Māori land ownership at Waikanae and Paraparaumu was further reduced in the 1960s by the Crown's failure to prevent compulsory sales of Māori land for the non-payment of rates, even where the land did not produce revenue. This was a breach of the Treaty.

In the case of the Parata Native Township, the Crown breached the Treaty by a number of ways, including by breaking faith with the original agreement and changing the relevant native township law in 1910, which allowed the inalienable township sections to be sold.

The Crown also breached the Treaty for its compulsory public works takings of land for the Paraparaumu Aerodrome (now the Kāpiti Coast Airport) in the 1930s and 1940s. The Crown then failed to protect the interests of the original owners when privatising the airport in 1995. The Crown also failed to properly consider offering surplus land back to the original owners before selling the airport to a private company. The Crown conceded that it failed to protect the original owners' rights when the airport company sold land in 1999, in breach of the Treaty.

The Tribunal also found that alienation of the Waikanae riverbed as a result of individual titles and surveying practices further breached the Treaty, the iwi's control of the river being

undermined by actions of local government enabled under legislation.

The Crown breached Treaty principles through the Town and Country Planning Act 1953, which allowed the Waikanae town centre to be sited on top of a Te Ātiawa/Ngāti Awa papakāinga without adequate consultation or consideration of Māori interests. On balance, the Tribunal also found that the Crown acquired the land for the Hemi Matenga Memorial Park, which is on the hillside above Waikanae township, in breach of the Treaty, and that today the claimants are unable to exercise tino rangatiratanga and kaitiakitanga over this taonga as the Treaty partnership requires.

To address the harm caused by the Crown's Treaty breaches, the Tribunal recommended the Crown urgently negotiate a Treaty settlement with Te Ātiawa/Ngāti Awa. The Tribunal also recommended that the Crown consider restoring legal ownership of the Hemi Matenga Memorial Park and implementing a co-governance arrangement for its management. It further recommended the Crown amend the offer-back procedures of the Public Works Act 1981, which prejudiced the former owners of Kāpiti Coast Airport lands.

The Porirua ki Manawatū Tribunal panel comprises presiding officer Deputy Chief Judge Dr Caren Fox, Dr Monty Soutar, Tania Simpson, and Dr Grant Phillipson (along with Sir Doug Kidd at the time of the report release). The panel is currently in the process of hearing the claims of Ngāti Raukawa and affiliated groups. Once the report addressing those claims is released, the inquiry's focus will turn to reporting on district wide issues and claims.

TINO RANGATIRATANGA ME TE KĀWANATANGA: THE REPORT ON STAGE 2 OF THE TE PAPAHAHI O TE RAKI INQUIRY

On 23 December 2022, the Tribunal released the first part of its stage two report on Te Papanahi o Te Raki District inquiry (Wai 1040). The *Tino Rangatiratanga me Te Kāwanatanga*, addressed the Treaty claims of iwi, hapū, whānau, other groups and individuals of Te Papanahi o Te Raki: the great land of the North. This release follows the Tribunal's stage one report *He Whakaputanga me te Tiriti: the Declaration and the Treaty* (2014), which considered whether Bay of Islands and Hokianga rangatira ceded sovereignty to the British Crown when they signed te Tiriti o Waitangi in February



Te Paparahi o Te Raki Inquiry panel. From left: Judge Craig Coxhead, the late Professor Ranginui Walker, Dr Ann Parsonson, Dr Robyn Anderson, and the late Dr Kihi Ngatai.

1840. The Tribunal concluded that Te Raki rangatira did not consent to the Crown acquiring sovereignty, nor to the Crown having authority to make and enforce law over their people and territories.

In this first part of its stage two report, the Tribunal considered nineteenth century issues arising from 415 Treaty claims in the inquiry district. Over 26 hearings took place between March 2013 and October 2017. Claimants organised themselves into seven taiwhenua: Hokianga, Takutai Moana, Te Waimate Taiāmai ki Kaikohe, Whangaroa, Mangakāhia, Whāngarei, and Mahurangi and the Gulf Islands. The inquiry panel comprised Judge Craig Coxhead (presiding officer), the late Professor Ranginui Walker, Dr Ann Parsonson, Dr Robyn Anderson, and the late Dr Kihi Ngatai.

The relationship between Te Raki Māori tino rangatiratanga and the Crown's kāwanatanga formed a central focus of the claims. Shortly after signing te Tiriti, the Crown would declare sovereignty over the North Island and then all of Aotearoa in two proclamations issued by the Queen's representative Captain Hobson in May 1840. The wording of these proclamations made clear that the British considered a 'cession' of sovereignty had taken place, and they heralded the introduction of foreign legal concepts not explained to Te Raki rangatira. The Tribunal concluded that when negotiating te Tiriti, the Crown failed to clarify that it intended to establish a government and legal system under its sole control, nor assert sovereignty over the whole country.

Claimants also took issue with the Crown's policies for the investigation of pre-1840 land transactions. Prior to 1840, Te Raki Māori transacted land with settlers according to their own laws. Rangatira had also expected the Crown to seek their agreement on the nature and shape of any investigation into these transactions. After 1840, the Crown imposed processes for determining land rights, supplanting the tikanga of Te Raki Māori without their consent. The Tribunal found that the Crown's imposition of English legal concepts, grant of absolute freehold title to settlers, and its own taking of 'surplus' lands, were effectively a raupatu (confiscation) of thousands of acres. Frustration with the trajectory of the Treaty relationship lay behind Hōne Heke Pōkai's flagstaff fellings of late 1844 and early 1845. The Tribunal described these fellings as a challenge to the Crown's encroachment on Ngāpuhi tino rangatiratanga and a signal that the Crown should meet with them and resolve issues of relative authority. However, the Crown failed to consider

Heke and others' underlying concerns and instead took military action against them. During the Northern War, the Crown initiated attacks on pā and kāinga; made the surrender of land a condition of peace, and did not consider the welfare of non-combatants, among other failures. The Tribunal concluded that the Crown's actions during the Northern War had severe short and long-term effects on Ngāpuhi.

Having faced armed resistance in Te Raki and other parts of the North Island, George Grey saw the Crown asserting control over entire districts through large-scale purchases ahead of settlement, payment of nominal prices, and restriction of Māori to small reserves required for their subsistence. From 1854, Donald McLean and purchase commissioners employed by the Native Land Purchase Department applied Grey's framework in Te Raki. The Tribunal found that the Crown failed to act reasonably and in good faith to engage with Te Raki Māori about the alienation and settlement of their lands. The Crown also failed to even uphold its own standards clearly articulated at the time and prioritised the interests of settlers and the purchase of large areas of land at low cost, the Tribunal found.

Alongside its purchasing policies, the Tribunal found that the Crown's constitutional changes undermined the Treaty relationship in Te Raki. These included the establishment of provincial and national representative assemblies, the grant of responsible government to the colonial ministries from 1856, and the transfer of authority for Māori affairs from the imperial and to colonial government. In taking these steps, the Tribunal found that the Crown failed to provide safeguards to secure Te Raki Treaty rights. By the mid-1860s, the settler government had introduced a Native Land Court that individualised title to Māori customary land and undermined community control over whenua, eroding the cultural, political, and economic organisation of hapū. The Tribunal found that the Crown's policies also led to large-scale land loss throughout the district.

In the face of the Crown's destructive policies, Te Raki Māori leaders pursued political initiatives to assert their tino rangatiratanga. They established committees to mediate internal disputes and manage relationships with settlers and the colonial government; engaged with other northern tribes to establish regular regional parliaments at Waitangi, Ōrākei, and elsewhere; and sought accommodation with the Kīngitanga. During the 1890s, Te Raki Māori took lead roles in the Kotahitanga movement's attempts to



The Justice System Inquiry panel with Waitangi Tribunal Unit staff and Pātaka Art & Museum staff. From left: Dr Ruakere Hond, Te Aurere Coker and Jaquan Nin (Gallery Assistants), Dr Paul Hamer, Matariki Wehi, Dr Hana O'Regan, Judge Carrie Wainwright, Heaven-Leigh Teofilo, Ana Sciascia (Director Pātaka Art & Museum), and James Carter.

establish a national Māori parliament. However, the Crown rejected or ignored their proposals for Māori self-government and was unwilling to recognise any significant transfer of authority from colonial institutions. The Tribunal concluded that in doing so, the Tribunal refused a historically unique opportunity to make provision in Aotearoa's constitutional arrangements for Māori tino rangatiratanga at a national level. It found the Crown's failure to recognise and respect Te Raki rangatiratanga over this period breached the Treaty and its principles.

The Tribunal recommended the Crown acknowledge the Treaty agreement entered into with Te Raki rangatira in 1840 and apologise for its Treaty breaches. It also recommended the Crown return all Crown-owned land in the district to Te Raki Māori; provide economic compensation; and enter discussion with Te Raki Māori to determine appropriate constitutional processes and institutions to recognise, respect, and give effect to their Treaty rights at the national, iwi, and hapū levels.

REPORT ON WHAKATIKA KI RUNGA, A MINI-INQUIRY COMMENCING TE RAU O TE TIKA: THE JUSTICE SYSTEM INQUIRY

The *Report on Whakatika ki Runga, a Mini-Inquiry Commencing Te Rau o te Tika: The Justice System Inquiry* issued in February 2023 finds that the Crown breached its Treaty duty to ensure that Māori claimants have the necessary resources to participate fully in all Tribunal processes. Claimants have been seeking a solution for several years, including through an urgent inquiry. Hearings finally took place in the latter half of 2022 as part of the newly constituted inquiry into the justice system, known as Te Rau o te Tika. The claimants argued that the unavailability of funding compromises their ability to make and pursue their Waitangi Tribunal claims and that this undermines the institution as a pillar of Aotearoa's constitution.

The Tribunal heard claimants in 53 claims on why the current arrangements for funding claimants are not working and do not meet Treaty standards. Claimant lawyers called over

40 witnesses, many of whom said the inadequate funding arrangements caused hardship and distress and discouraged participation.

The Crown called 11 witnesses from eight separate government agencies. Their evidence explained those agencies' point of view on the funding arrangements that operate in eight kaupapa inquiries. The Crown conceded problems with current funding arrangements but argued that they were good enough in Treaty terms.

The Tribunal did not accept the Crown's characterisation of the problems. It details in its report the many flaws in the present ad hoc funding arrangements. It was particularly concerned that officials knew about the inadequacies, but Ministers did not act on their advice. The Tribunal says that, when the Crown fails to resource Māori properly to participate in its inquiries, the purpose of the Tribunal is seriously undermined. It is up to the Crown, which created the Tribunal for 'the observance, and confirmation, of the principles of the Treaty of Waitangi', to ensure that claimants can access its processes easily and in a culturally comfortable way. There is simply no point in having a Waitangi Tribunal otherwise.

The Tribunal says that it is now urgent that the Crown and Māori sit down together to design suitable funding arrangements. It is not acceptable, in this area of policy that primarily affects Māori, for the Crown to come up with policy and leave 'consulting' Māori to the end. The Tribunal also recommends a standardised funding protocol until the long-term arrangements are agreed.

The claimants also sought to have the Ministry of Justice pay for documents filed in te reo Māori to be translated into English. Translations are required because there are participants in the process who cannot read Māori. Claimants told the Tribunal that this was not their fault. If the Tribunal requires translations, the Ministry of Justice should bear the cost. The Tribunal agreed. It strongly stated the imperative for the Ministry to prioritise and fund this work. Claimants and their lawyers have a right to file submissions and evidence in Māori, and the Crown must support the use of te reo Māori in the Tribunal, whether orally or in writing. It was, after all, the Tribunal that, 40 years ago, found te reo Māori to be a taonga under the Treaty.

The panel members for Te Rau o te Tika are Judge Carrie Wainwright, Dr Hana O'Regan, Dr Ruakere Hond, and Dr Paul Hamer.

HOMELESSNESS REPORT – STAGE ONE OF THE HOUSING POLICY AND SERVICES INQUIRY

The *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness* – was issued in May 2023. It concludes the first stage of the Tribunal's inquiry into housing policy and services and covers the period from 2009 to 2021.

The Tribunal found that the Crown has breached its Treaty obligations in several respects. The Crown formulated a definition of homelessness in 2009 without adequate consultation with Māori, and in the seven years that followed it took essentially no action to address rising levels of Māori homelessness. It formulated a Māori housing strategy but did not implement it, and it tightened access to the social housing register despite Māori reliance on social housing. The Crown also reduced the proportion of housing stock that is public or social housing. Taken altogether, these actions breached the Treaty principles of active protection, equity, and good government. The Crown itself conceded that it had breached the Treaty in the early part of the inquiry time frame.

The report noted that, in the period since 2016, when the Government was forced to recognise a housing crisis, the Crown has taken a series of measures to combat Māori homelessness. Most of these occurred so soon before (or even during) the Tribunal's inquiry that their impact and Treaty-compliance cannot yet be measured. However, in certain respects, the Crown has continued to breach the Treaty through the narrowness of its consultation about its new strategies, its ongoing failure to collect thorough homelessness data, the shortcomings in inter-agency coordination, its continued failure to reform the welfare system to improve outcomes for Māori, and its lack of support for homeless rangatahi.

The Tribunal confirmed that the Crown has a Treaty obligation to protect rangatiratanga over kāinga but remarks that traditional kāinga barely exist today because of colonisation and urbanisation. In the circumstances, the Tribunal said, the starting point for the Crown's fulfilment of its Treaty duty to is to provide suitable housing to homeless Māori, because that is the immediate need.

Because the contributors to homelessness are so varied, the Tribunal did not identify solutions to the problem in this stage one report. That is a matter for a future Tribunal report to be released once the Housing Policy and Services Inquiry has



Source: Māori Maps

Te Puea Memorial Marae in Māngere Bridge, South Auckland – where claimant hearings for the Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness were held.

investigated the broader issues that so patently underlie Māori homelessness and housing problems more generally – including the impact of colonisation, the Māori land tenure system, and the structural drivers of poverty. Instead, and despite the request of some claimants for it to range further, the report’s focus is on Crown strategies and policies to reduce Māori homelessness since 2009. The Tribunal signalled this limited scope in its statement of issues released before the commencement of hearings.

While deferring findings on issues concerning housing on rural Māori land, the Tribunal nonetheless noted the appalling living conditions of many Māori who have returned to live on their whenua, which it says should be unacceptable in twenty-first century Aotearoa.

The Tribunal made one recommendation: that the Crown and claimants now work in partnership on a new definition of homelessness that incorporates Māori perspectives.

Hearings for this priority stage of the housing inquiry took place between March and November 2021. The Tribunal agreed to begin the inquiry by addressing the issue of Māori homelessness at the firm request of the majority of the claimants, whose position was supported by the Crown. The Tribunal heard claimants in 79 claims, and witnesses appeared for the Crown from five separate agencies. Technical witnesses were called by the claimants, but no research was commissioned for this part of the inquiry.

The Housing Policy and Services Inquiry will move into the main part of its hearing programme in 2024.

The panel members for the inquiry are Judge Craig Coxhead (presiding officer), Dr Paul Hamer, Prue Kapua, and Basil Morrison.

FOOTNOTES

1. Treaty of Waitangi Act 1975, section 5.
2. Treaty of Waitangi Act 1975, section 6.
3. Since 1 September 2008, no new historical claims can be filed.
4. Treaty of Waitangi Act 1975, section 4.
5. Treaty of Waitangi Act 1975, Schedule 2, clause 5.
6. Dr Soutar was also appointed to the Constitutional Kaupapa Inquiry, after the relevant time period of this report.
7. Mr Crosby was also appointed to the Standing Panel Inquiry, after the relevant time period of this report.
8. Ms Ngārimu was also appointed to the Housing Policy and Services Inquiry, after the relevant time period of this report.
9. Professor Frankel was also appointed to the Health Services and Outcomes Inquiry, after the relevant time period of this report.
10. Mr Prime was also appointed to the Standing Panel Inquiry, after the relevant time period of this report.
11. Chief Judge Dr Caren Fox was appointed Chairperson in September 2023.
12. Judge Isaac's appointment to the Standing Panel Inquiry ended when he reached the statutory judicial retirement age in April 2023. Judge Terena Wara was subsequently appointed as presiding officer of this inquiry, after the relevant time period of this report.
13. Treaty of Waitangi Act 1975, section 4(5).
14. Inquiries yet to commence, as the current kaupapa inquiry programme stands, are education services and outcomes, social services and social development, economic development, identity and culture, natural resources and environmental management, and citizenship rights and equality.
15. See 'Inquiry into Remaining Historical Claims (Standing Panel)' on page 18.
16. The claims of Ngāti Toa, Rangitāne, and Ngāti Apa are settled.
17. The Horowhenua: The Muaūpoko Priority Report 2017; The Kārewarewa Urupā Report 2020; and the Waikanae: Report on Te Ātiawa/Ngāti Awa Claims 2022.
18. See footnote 11.
19. The Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry Stage 2 Report was released on 6 October 2023, after the relevant time period of this report.
20. Treaty of Waitangi Act 1975, Schedule 2, clause 5.
21. This does not include research commissioned by claimants, the Crown, or third parties.
22. Commission subsequently cancelled on 26 May 2023.

BACKGROUND IMAGE: Design by Cliff Whiting, invoking the signing of the Treaty of Waitangi and the consequent interwoven development of Māori and Pākehā history in New Zealand as it continuously unfolds in a pattern not yet completely known. Whiting's works are used on the covers of numerous Tribunal reports.

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Waitangi Tribunal



**TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI
THE WAITANGI TRIBUNAL**

**PŪRONGO-Ā-TAU O TE MATARIKI 2022 KI 2023
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