

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 76



Waitangi Tribunal

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## In this Issue



Tribunal member Dr Monty Soutar on a site visit to Big Hill Station, on the eastern side of the Ruahine Ranges. This visit took place during a recent Taihape Inquiry hearing at Omahu Marae, which focused on the Kāweka-Gwavas Crown forestry lands. All Tribunal hearings were suspended during the Covid-19 lockdown period, but final Taihape hearings are scheduled for late 2020 or early 2021. Meanwhile, a priority Tribunal report on landlocked Māori land in the district is in preparation.

**T**HIS issue of *Te Manutukutuku* looks back at a busy time for the Tribunal. Late 2019 and early 2020 saw the conclusion of several inquiries and the pre-publication release of a large number of reports. We focus on several here, including the final issues-based volume of *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, and various high-profile urgent and kaupapa reports.

This issue also covers the appointment of two new Tribunal members, acknowledges the work of a past Tribunal member honoured in the recent Queen's Birthday Honours List, and profiles two recently appointed staff members. It also shines a light on how the Waitangi Tribunal and the Tribunal Unit continued operating throughout the recent Covid-19 crisis. □

# From the Chairperson

WHEN our last issue was published in early February, the Covid-19 outbreak was a threat on the far horizon. It has since become a devastating pandemic afflicting nearly all countries, including New Zealand. Currently, new cases and deaths worldwide are at record levels and rising. The drastic control measures that many countries have taken have had severe economic and social impacts from which it may take years to recover.

In late March, as New Zealand went into level 4 lockdown, Chief Justice Helen Winkelmann stated that as an essential community service her expectation was 'that whatever level the alert is raised to, the courts will remain available and will operate'. Court and Tribunal services were nevertheless prioritised and severely restricted. In the Waitangi Tribunal jurisdiction, I issued a level 4 (lockdown) protocol adjourning all scheduled hearings and other events. This continued under level 3 until mid-May for in-person events while allowing

judicial conferences that could be conducted remotely by phone or audio-visual link.

From mid-May, the Tribunal was able to resume its functions to the extent that they could be safely conducted and supported within the framework of level 2 restrictions. With large hearing attendances common and a high proportion of elderly, the Tribunal's paramount concern continues to be the well-being of all those participating. The Tribunal's preference under level 2 was for events to be conducted by phone and video conferencing rather than in-person, and remote participation remains an option at the discretion of the presiding officer now that all government restrictions have been lifted under level 1.

Throughout this difficult period, the Tribunal has shown its determination to progress its inquiry programme where practicable. This has been made possible by the commitment of presiding officers and panel members and the dedicated and innovative support

provided by the Tribunal's staff. The results are evident in the release of no fewer than four Tribunal reports within six weeks of the lockdown ending. Presiding officers, members and staff are to be commended for their efforts in sustaining the kaupapa of the Waitangi Tribunal under extremely challenging circumstances.

With the return to full operations in June, inquiry schedules are under review in many inquiries. The Tribunal is sensitive to the economic and social hardship being experienced across the nation, not least in Māori communities. The work of many claimants and counsel in preparing for hearings has been disrupted and may require additional time. The Tribunal will be responsive to the needs of participants as its inquiries resume normal working.

Chief Judge Wilson Isaac  
Chairperson



# From the Director

KIA ORA TATOU. It is with great pleasure that I once again provide an update on the work of the Waitangi Tribunal Unit. For the past year, I have been working on the Whenua Māori Programme and Te Ture Whenua reforms. Having returned to my role as director in April, I am impressed with the progress made on the work programme over this time and I want to acknowledge and thank Renee for her leadership of the unit in my absence.

I also want to acknowledge the great contribution made by staff on the eight

reports released in pre-publication format since December 2019. In addition, staff also contributed to the first determination in the Wairarapa ki Tararua Remedies inquiry. This is a significant achievement.

More generally, I am very proud of the way in which the Tribunal's work progressed during the Covid-19 lockdown. Negotiating the Government's alert levels was, understandably, disruptive for all, yet the unit responded to the challenge and adapted to new ways of working to ensure high-quality

and timely support to the Tribunal was maintained. In doing so, the Tribunal's work programme continued to be progressed despite lockdown restrictions.

The remainder of this year will continue to be busy. I look forward to updating you in the next edition on how our work has progressed.

Grace Smit  
Director



# Member Appointments

SINCE our last edition, two new members have been appointed to the Tribunal and one member has been reappointed.

## Dr Paul Hamer

Paul Hamer is a historian with extensive experience in the public sector. From 1993 to 2004, he worked for the Waitangi Tribunal, for most of that period leading the team that assisted Tribunal inquiry panels in the writing of their reports. From 2004 to 2007, he was employed at Te Puni Kōkiri, mainly as a policy manager in the area of Treaty settlements. During 2006, he was based at Griffith University in Queensland as a visiting fellow, researching a report for Te Puni Kōkiri about Māori in Australia, which was launched by the Minister of Māori Affairs in Sydney in 2007.

In 2008, Paul returned to working for the Tribunal, taking a lead role in assisting the writing of Tribunal reports on two major inquiries. The first was the report on the Wai 262 flora and fauna and Māori intellectual property claims. In the second, the

*Dr Paul Hamer*



Te Paparahi o te Raki (Northland) Tribunal reported on Māori and Crown understandings of the meaning and effect of te Tiriti/the Treaty of Waitangi at the time of its signing. He also authored several historical research reports commissioned by the Tribunal as evidence. Since 2017, Paul has been employed as principal adviser in the Rautaki Māori (Māori Strategy and Partnerships) Team at the Department of Corrections.

Paul has longstanding connections with Victoria University of Wellington's Institute of Policy Studies and School of Māori Studies Te Kawa a Māui. He has a doctorate from Monash University in Melbourne, with a thesis on Māori inclusion and exclusion in Australia since 1901.

## Professor Susy Frankel

Susy Frankel, FRSNZ, is a professor of law and the chair of intellectual property and international trade law at Victoria University of Wellington. After practising law in New Zealand and the United Kingdom, in 1997 Susy joined Victoria University of Wellington's Faculty of Law and in 2008 was the first woman promoted to full professor in the faculty. She assisted then Chief Judge Joe Williams and the Tribunal panel as consulting counsel in their inquiry into the Wai 262 claim. From 2008 to 2020, she was chair of the Copyright Tribunal and from 2015 to 2017 she was the president of the International Association for the Advancement of Teaching and Research in Intellectual Property. She has been the co-director of the University's New Zealand Centre of International Economic Law since its foundation in 2007. She has taught in several law schools abroad, including in 2020 as a global professor at New



*Professor Susy Frankel*

York University's School of Law. Her scholarship focuses on international intellectual property and its nexus with the protection of indigenous peoples' knowledge and innovation and on the relationship between intellectual property and international trade. In 2018, she was elected Fellow of the Royal Society of New Zealand.

## Basil Morrison

We congratulate Basil Morrison CNZM JP on his reappointment to the Tribunal. Mr Morrison was first appointed as a member in 2008 and is currently serving on the panels for the North-Eastern Bay of Plenty district inquiry and the Housing Policy and Services kaupapa inquiry. □

### VISIT THE TRIBUNAL ONLINE

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

[www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

# Sir John Kneebone

SIR JOHN KNEEBONE CMG, who passed away on 28 June 2020, was first appointed to the Tribunal in 1989 and was reappointed for a further three terms. Sir John served on several major inquiries into iwi and district claims, including Te Roroa, Rekohu (Chatham Islands), and Hauraki, whose report was released in 2006. He also sat in the urgent inquiry into the Kiwifruit Marketing Board and the Whanganui River inquiry, which released its landmark report in 1999. Sir John was the inspiration behind the National Agricultural Fieldays,

started in 1969, and was elected president of Federated Farmers in 1974. He was knighted in the 1988 New Year Honours for public services and services to agriculture. Sir John brought his knowledge and experience of rural farming communities to the Tribunal, and as well as his work on major inquiries he worked tirelessly and effectively in the early 1990s alongside the then Tribunal director, Buddy Mikaere, in visiting many small rural communities to explain the work of the Tribunal at a time of considerable tension over land-related Treaty claims. □



Sir John Kneebone CMG

Kneebone whānau

# Ahorangi Tā Derek Lardelli

OUR congratulations to Ahorangi Derek Lardelli ONZM, who was knighted for his services to Māori art in the Queen's Birthday Honours List. Tā Derek (Ngāti Porou, Rongowhakaata, Ngāti Konohi, Ngai Te Aweawe) was appointed to the Tribunal in 2015. He served on the panel for the urgent inquiry into Māori prisoner reoffending rates, which reported in 2017, and until 2018 on the panel hearing applications for remedies from Wairarapa ki Tararua claimants.

Tā Derek is the founding principal tutor and associate professor at Toi Houkura School of Māori Arts at the Eastland Institute of Technology's Tairāwhiti campus in Gisborne. In 2007, he completed a masters degree at Canterbury University's Ilam School of Fine Arts and in 2019 was awarded an honorary doctorate by the University of Waikato. He is regarded as one of Aotearoa's finest tā moko artists and has taken a leading role in expounding the revival of the art and its spiritual significance to audiences



Ahorangi Tā Derek Lardelli ONZM

Norm Heke

throughout New Zealand and the Pacific. As well as a tā moko artist, he is a carver, kapa haka performer, composer, graphic designer, and researcher of whakapapa, tribal history, and kaikōrero. He has facilitated and participated in numerous exhibitions and workshops in New Zealand and overseas and has exhibited his work around the world.

Tā Derek leads and tutors the Whāngārā Mai Tawhiti kapa haka group, which won the supreme award at Te Matatini national kapa haka championships in Hastings in 2017. Amongst many projects and roles, he has been cultural adviser to the All Blacks since 2005 and composed their haka, *Kapa o Pango*, performed at the Rugby World Cup in 2011. □

# Staff Profiles

## Andrew McIndoe

Andrew McIndoe joined the report-writing team of the Waitangi Tribunal Unit in February 2020 as a researcher / analyst. Andrew has acquired policy, legal, and academic experience in New Zealand and abroad. He completed bachelors degrees in law and arts (majoring in history and politics) at the University of Auckland, where he wrote his honours dissertation on British understandings of sovereignty at the time of the signing of Te Tiriti. In 2013 and 2015, Andrew was contracted to the unit as a report-writing assistant, providing drafting and editing assistance for several reports, including Te Paparahi o te Raki Stage 1 and Te Urewera.

After leaving the unit, Andrew pursued a master of arts in Middle Eastern Studies at Harvard University, where he focused on twentieth-century history, contemporary Arab politics, and the Arabic language. He also completed two internships at the United Nations in New York City, before working as a consultant at the United Nations Relief and Works Agency, a humanitarian body that provides

*Researcher / Analyst Andrew McIndoe*



healthcare, education, and other social services to Palestinian refugee populations. After a brief stint as a paralegal in London, he returned to the unit at the beginning of this year, where he has been assigned as a report writer on the Tribunal's Oranga Tamariki inquiry.

Andrew says that, while living and working overseas, he gained a 'deeper appreciation of the uniqueness of the Treaty relationship on a global level', and he is 'really excited to be back in Wellington contributing to the Tribunal's work at this important time for the organisation'. Having mainly worked on district inquiries during his previous stints at the unit, he is particularly glad to now be a part of the Tribunal's transition towards kaupapa inquiries.

## Brianna Boxall

Brianna Boxall (Ngāti Hine, Ngāti Rongomaiwahine) joined the Waitangi Tribunal Unit in November 2016 as a summer intern in the research services team. Since then, Brianna has been a member of the registrarial team as an assistant registrar, and a researcher / analyst and then senior facilitator in the inquiry facilitation team. More recently, she has returned to the registrarial team, where she now holds the role of legal adviser / deputy registrar.

In her new position, Brianna assists the technical legal leadership of the Waitangi Tribunal Unit in ensuring that claimants can have their claims registered and considered appropriately. Working across the unit and supporting the registrar, Brianna helps provide staff and the judiciary with legal expertise and advice on the registration and handling of claims.

Brianna grew up in Mahia, a small beach town on the East Coast of New Zealand, before moving with her



*Legal Adviser / Deputy Registrar Brianna Boxall*

family to Florida in the United States, where her father relocated for his work. Brianna returned to New Zealand to attend high school, before moving to Auckland to pursue her undergraduate studies. She attended the University of Auckland, where she graduated with a bachelor of laws and a bachelor of arts with a double major in history and archaeology. While studying, Brianna was elected Tumuaki Wāhine of Te Rākau Ture, the Māori Law Students Association of the University of Auckland. In 2017, Brianna spent time in New York studying at the Centre for the Study of Ethnicity and Race at Columbia University, where she received a certificate in the Indigenous Studies Programme for Indigenous Peoples' Rights and Policy.

Brianna says her time in New York – coupled with the support she received from Te Rākau Ture and Te Hunga Rōia Māori o Aotearoa while studying – was when her passion for, and interest in issues relating to, the Treaty of Waitangi developed. Brianna is committed to working for the Tribunal and taking all opportunities to learn and gain valuable insight from the judiciary and members. □

# Unit Team Profile: Report Writing

A FLURRY of pre-publication report releases in late 2019 and early 2020 caps off a period of change and development for the Tribunal Unit's report-writing team. The team's role is to support Tribunal members in analysing evidence and producing their reports.

In recognition of the unit's ongoing transition from a nearly completed district inquiry programme to kaupapa inquiries into mainly contemporary issues of national significance and urgent or remedies inquiries, the report-writing team has re-evaluated aspects of its approach to working in

recent years. Since 2017, the number of staff positions has been increased, accountabilities have been revised, and report-writing processes have been assessed in light of the Tribunal's evolving work programme. The team has also focused on developing the versatility of its staff's skill-base through regular in-house technical training sessions to ensure it provides optimum service to panels as the Tribunal moves into a new inquiry landscape.

The support of report-writing staff has assisted Tribunal panels to release multiple reports. During the 2019 calendar year, eight reports were released

in pre-publication format. Four more reports were issued in the first half of 2020, despite the impact of the Covid-19 lockdown. Report-writing staff also contributed to the first determination in the Wairarapa ki Tararua remedies inquiry – a substantial interim Tribunal decision issued to parties in advance of an official Tribunal report – released in April.

A number of the Tribunal reports have attracted considerable media attention, particularly the stage 1 health report *Hauora* and the concise *He Aha i Pērā Ai? The Maori Prisoners' Voting Report*. □

Report-writing staff, June 2020. Left to right: Lawrence Patchett, Ethan McKenzie, Andrew McIndoe, Maudie Johnson-Hunter, Andrew Francis (Manager), Genevieve O'Brien, Dominic Hurley, Jane Latchem, Daniel Morrow, Margot Schwass, Joy Hippolite, Ngawai MacGregor, Barnaby Melville. Not present: Ryan Anderson, Kristen Wineera, Ella Arbury.



# Momentum Maintained in Lockdown

LIKE organisations everywhere, the Waitangi Tribunal found itself developing new ways of operating during the Covid-19 crisis. The paramount concern was to ensure the safety of the claimants, the counsel, the judiciary, the panel members, the staff, and everyone involved in the Tribunal's public events. But the Tribunal was also determined to keep delivering core services and progressing inquiry-related work wherever feasible.

During the level 4 lockdown period, the Tribunal's offices were shut, all hearings and other in-person events were adjourned, and documents could be filed only electronically. Chief Judge Wilson Isaac and Registrar Jamie-Lee Tuuta worked together – albeit at a distance – to manage emerging issues, including a request for an urgent hearing. Staff with the requisite technology and secure access to Tribunal documents worked at home where possible, connecting regularly with colleagues and panels online. Tribunal presiding officers and members also worked at home as necessary.

Despite the disruption, some Tribunal events were able to go ahead using new approaches and technologies. Panel meetings were held remotely even under levels 4 and 3, and a new word entered the Tribunal's lexicon: the zui (hui via Zoom). After the move to level 2 in May 2020, more than 50 participants in various locations took part in each of the Oranga Tamariki and Mana Wāhine judicial conferences, using Zoom. Both events were live-streamed and simultaneous translation was available as usual.

Although the unit's output from the start of the lockdown on 25 March until the move to level 1 in early June was necessarily restricted, momentum was maintained. The claims and registry team dealt with a steady stream of new or amended claims and processed



Whare Ākūhata, Te Hono ki Raukawa

*Tribunal member Tania Simpson and presiding officer Deputy Chief Judge Fox are welcomed at the Porirua ki Manawatū hearing held in March, just before the level 4 lockdown was announced. All hearings were postponed throughout the lockdown period, in recognition of the risks inherent in the direct person-to-person contact that makes these events so important to the Tribunal process.*

and distributed some 250 submissions from counsel. They also responded to around 60 registry-related requests. Inquiry facilitation staff continued to work on active inquiries in preparation or hearing. Working remotely, research services staff prepared two commissioned research reports for filing (for the Military Veterans and North-Eastern Bay of Plenty District inquiries), completed mapping work, and wrote discussion papers for forthcoming kaupapa inquiries. Report-writing staff assisted Tribunal panels in finishing several Tribunal reports for post-lockdown release – two reports being released under level 2 and two more shortly after the move to level 1.

On 9 June, the Tribunal returned to normal operation, with a few provisos. Remote participation in Tribunal events was still an option if appropriate, with presiding officers deciding this on a case-by-case basis. The Ministry of Justice's health and safety practices for courts nationwide (covering hygiene, access, contact tracing, and more) would be followed at the Tribunal's hearings. And, although any change in the Covid-19 national alert level might require the Tribunal to reduce or suspend in-person attendance in the future, the lessons learned during the lockdown mean that it is now better prepared to operate remotely. □

# Te Rohe Pōtae Report Parts 4 and 5

THE final major chapters of *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims* have been released. Part 4 – five chapters addressing how the rapid alienation of Māori land affected tribal authority and autonomy in the district – was released in December 2019. It was followed in June 2020 by part 5, which examines the effects of Crown policies and actions on health, education, and Te Reo Māori in Te Rohe Pōtae.

In its entirety, the *Te Mana Whatu Ahuru* report examines the relationship between the iwi and hapū of Te Rohe Pōtae and the Crown following the signing of the Treaty of Waitangi in 1840. The inquiry district ranges from Whaingaroa Harbour in the north, as far east as Maraeroa and Wharepungua blocks, and south to the area just north of Taumarunui. Te Kūiti and Ōtorohanga are towns central to the district. The inquiry formally began in October 2006 with the first judicial conference. Between 2010 and 2015, the Tribunal held six weeks of Ngā Kōrero Tuku Iho hui, focusing on oral and traditional evidence, followed by 17 further hearing weeks.

Parts 1 and 2 of the report, released in September 2018 (see issue 73), examine Te Ōhākī Tapu, the series of agreements Te Rohe Pōtae rangatira and the Crown made between 1883 and 1885. In exchange for opening the region – effectively sealed for two decades following the war and raupatu of the 1860s – to the North Island Main Trunk Railway, Te Rohe Pōtae rangatira expected the Crown to actively protect their mana whakahaere, or authority over their communities, lands, and affairs. But despite the gravity of Te Ōhākī Tapu, the Crown failed to prevent the erosion of Te Rohe Pōtae Māori mana whakahaere and tino rangatiratanga. In fact, as discussed in part 3 (released in June 2019,

see issue 74), in the years following the agreements the Crown introduced institutions, mechanisms, and practices that either facilitated the removal of lands, or prevented owners from using remaining lands as they wished, thereby suppressing and marginalising the tino rangatiratanga rights of Te Rohe Pōtae Māori. As a result, the tribal estate shrank from 934,367 acres, or roughly half of the inquiry district in 1909, to just 342,722 acres, around 18 per cent of the district, by 1966.

The recently released part 4 examines the contraction of Te Rohe Pōtae autonomy stemming from this loss of whenua. This part of the report addresses how the rapid alienation of Māori land (detailed in parts 2 and 3) reflected, and itself fuelled, an erosion of the ability of Te Rohe Pōtae Māori to exercise mana whakahaere over the way the district and its inhabitants were managed. In the years after the Te Ōhākī Tapu agreements, the Crown's actions, omissions, legislation, and policies designed to develop the area for Pākehā settlement largely stripped Te Rohe Pōtae Māori of their tribal authority. Areas affected included the governance and management of Māori communities, the impact of local government and public works legislation on remaining Māori land, and the management of the natural environment, including waterways.

The Tribunal found that the Crown failed to sustain Te Rohe Pōtae self-government in a Treaty-compliant way. While Te Rohe Pōtae Māori participated in a succession of representative structures and institutions they expected to provide them with at least a form of mana whakahaere, these spheres of influence were limited, and many did not prove enduring. The imposition of Pākehā local government structures further complicated the Te Rohe Pōtae Māori struggle to retain

mana whakahaere, and the Tribunal found that the Crown failed to ensure local government structures would adequately consider Te Rohe Pōtae rights to exercise their mana whakahaere and tino rangatiratanga.

Compulsory taking of Māori land for public works development purposes, which occurred on a large scale after the Te Ōhākī Tapu agreements, was another means through which large tracts of Māori land were alienated, and Te Rohe Pōtae tribal authority diminished as a result. The Tribunal found that without meaningful consultation and without meeting tests of last resort, the Crown undertook the largest takings for public works in New Zealand history in the inquiry district during the twentieth century.

Crown and local authorities' regulation of the natural environment, including waterways and water bodies, further diminished Te Rohe Pōtae Māori tribal authority over many taonga and sites of significance. Additionally, the Tribunal found Crown regulation and mismanagement of the natural environment likely resulted in significant damage to many of these important sites.

Part 5 concludes the report's general discussion of the Treaty relationship in the district and the effects of the Te Ōhākī Tapu agreements. The volume draws together the diverse and interconnected themes of health, alcohol consumption and control, socio-economic conditions, education, and the use and development of te reo Māori in two chapters: 'Te Oranga o Ngā Tāngata: Health and Wellbeing 1886 to the Present' and 'Ngā Mahi Whakaako me te Ahua o te Reo: Education and Te Reo Māori'.

The assurances that Crown representatives gave Te Rohe Pōtae leaders in the 1880s provide one clear yardstick against which to assess later



*In this photograph, taken during week 16 of the inquiry hearings, river, sky and countryside are framed by a triangle of hulking powerlines and a majestic pou. The image evokes an issue at the heart of the long-running inquiry: the complex and continually unfolding relationship between European settlement and the right of Te Rohe Pōtae Māori to exercise mana whakahaere, or control of their own communities and affairs.*

Crown conduct in the inquiry district in respect of health and alcohol control, education, and te reo. In considering whether the Crown kept to the bargain inherent in Te Ōhāki Tapu, the Tribunal found numerous instances in which its actions and omissions fell short of these agreements and the Treaty duties and responsibilities that they embodied. In doing so, the Crown breached Treaty principles. Te Rohe Pōtae Māori were prejudiced by Crown actions in multiple ways. They occupied a disadvantaged position within the local economy; they earned less than other groups in the population and had worse health and lower quality housing; they migrated away from the district out of necessity; they had an often-fragile hold on

employment; and for many years they were unable to govern the health and wellbeing of their communities.

In the areas of education and te reo Māori, the Tribunal heard evidence of discrimination in legislative regimes and their implementation by special purpose authorities, requirements for Māori communities to gift land for schools not applied to Pākehā, inequitably long waiting periods for the provision of schools in those communities, the use of permanent alienation to gain title over school sites, and the monocultural orientation of education services.

For much of the twentieth century, government-directed education in Te Rohe Pōtae, as elsewhere in New Zealand, prioritised assimilation over

te reo Māori and cultural practices, sometimes using physical punishment as an informal tool of coercion. These deficiencies were described as symptoms of a larger Crown failure to ensure that Māori parents could have meaningful input into their children's education through fair representation on school governance bodies and, at the district level, a pattern of inequity that continues to a significant extent to this day.

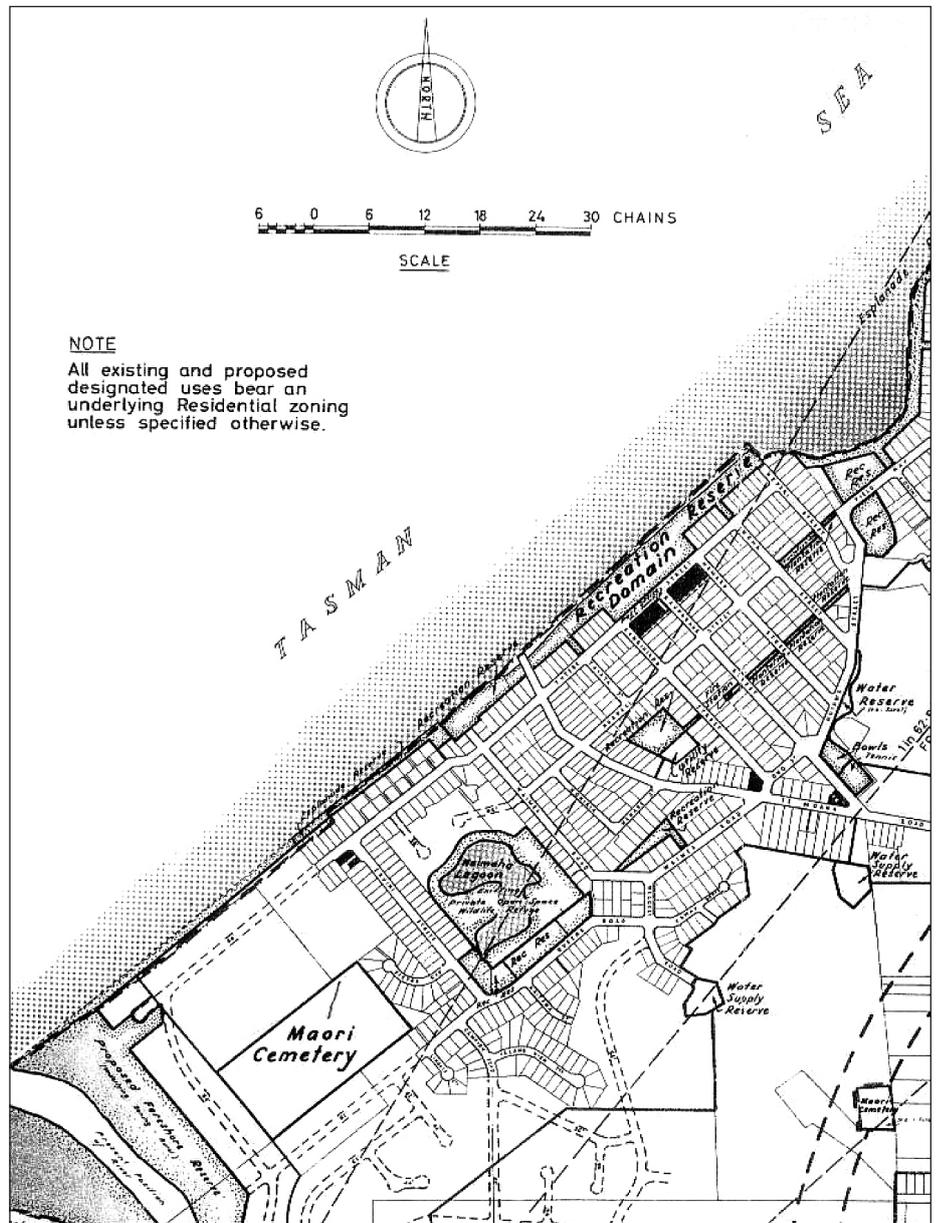
The Tribunal panel comprises Deputy Chief Judge Caren Fox, John Baird, Dr Aroha Harris, Sir Hirini Moko Mead, and Professor Pou Temara. Deputy Chief Judge Fox was appointed presiding officer after the death of Judge David Ambler in 2017. □

# Kārewarewa Urupā Report

THE Tribunal’s report on the Kārewarewa urupā was released in pre-publication format on 26 May 2020. This urupā is located at Waikanae beach. During Te Ātiawa/Ngāti Awa hearings for the Porirua ki Manawatū district in 2018–19, the Tribunal agreed to issue an early report on the urupā claims. Deputy Chief Judge Caren Fox presides over the Porirua ki Manawatū inquiry, with Sir Douglas Kidd, Dr Grant Phillipson, Dr Monty Soutar, and Tania Simpson as panel members.

Prominent ancestors of Te Ātiawa/Ngāti Awa ki Kāpiti were buried at Kārewarewa in the nineteenth century, beginning in 1839 after the historic battle of Kuititanga between that iwi and Ngāti Raukawa. The block was set aside as a ‘cemetery’ in 1919 but then sold to the Waikanae Land Company in 1968–69 by vote of a meeting of assembled owners. At this meeting, owners representing only one-fifth of the shares were present and voted to sell. They were told at the meeting that the land was not the urupā block. A sale in these circumstances was only possible, the Tribunal found, because the meetings of owners’ system set a very low quorum and allowed tiny minorities to sell the land without any checks or balances. The Tribunal found that this was a breach of Treaty principles.

After the sale, the company applied to the county council to remove the ‘Māori cemetery’ designation so that it could develop the land (see map). The council agreed in 1970, despite opposition from kaumātua. The Crown conceded that it failed to intervene, and that its failure led to the desecration of the urupā in breach of the Treaty. The Tribunal accepted this concession and found that the planning legislation at the time was also responsible and in breach of Treaty principles. Over half of the urupā block was developed for



Horowhenua County district scheme map showing the ‘Maori Cemetery’ block

housing in the 1970s as a result of these breaches.

In 2016, the company applied to Heritage New Zealand for authority to carry out an invasive investigation. Kōiwi (human remains) had been found in 2000 and so permission was required for further work. The Tribunal found that section 56 of the Heritage New Zealand Pouhere Taonga Act 2014, under which authority was granted, was in breach of

Treaty principles. This was because Māori values did not have to be taken into account for this kind of authority, even though the site was a wāhi tapu. Also, the timeframe for deciding applications was too short. The Tribunal’s recommendations included a review of the timeframe and an amendment of the Act to require Māori values and ‘the relationship of Māori and their culture and traditions’ with their wāhi tapu to be considered in future. □

# Mana Ahuriri Mandate Report

**T**HE Tribunal's report on the Mana Ahuriri mandate inquiry was released in pre-publication format on 17 December 2019. Chief Judge Wilson Isaac presided with Dr Monty Soutar, Prue Kapua, and Dr Grant Phillipson as panel members.

The Mana Ahuriri incorporation negotiated the claims of seven Ahuriri hapū, who have shared interests in their taonga Te Whanganui a Orotu (the Napier Inner Harbour) and in the Napier district. The settlement was challenged by three of the seven hapū, who applied for an urgent hearing from the Tribunal. They claimed that Mana Ahuriri was not accountable to them during the negotiations and alleged irregularities in the process used to ratify the settlement. These hapū argued that Mana Ahuriri had lost its mandate to negotiate their claims but the Crown signed the deed of settlement anyway. Following Tribunal mediation, two hapū reached an agreement with the Crown. The claim of the third

hapū, Ngāti Pārau, was heard urgently at Napier in February 2019.

In Treaty settlement negotiations, the Crown monitors mandated bodies to ensure that they stay accountable to claimants and keep their mandates. The Tribunal found that Mana Ahuriri failed to hold elections and present financial accounts, as required by its constitution, and the Crown failed to monitor these accountability measures. The Crown acknowledged that its monitoring had flaws but argued that these flaws were not serious enough to be a Treaty breach. The Tribunal agreed because the Crown had discovered the accountability problems in time to act on them before completing the settlement.

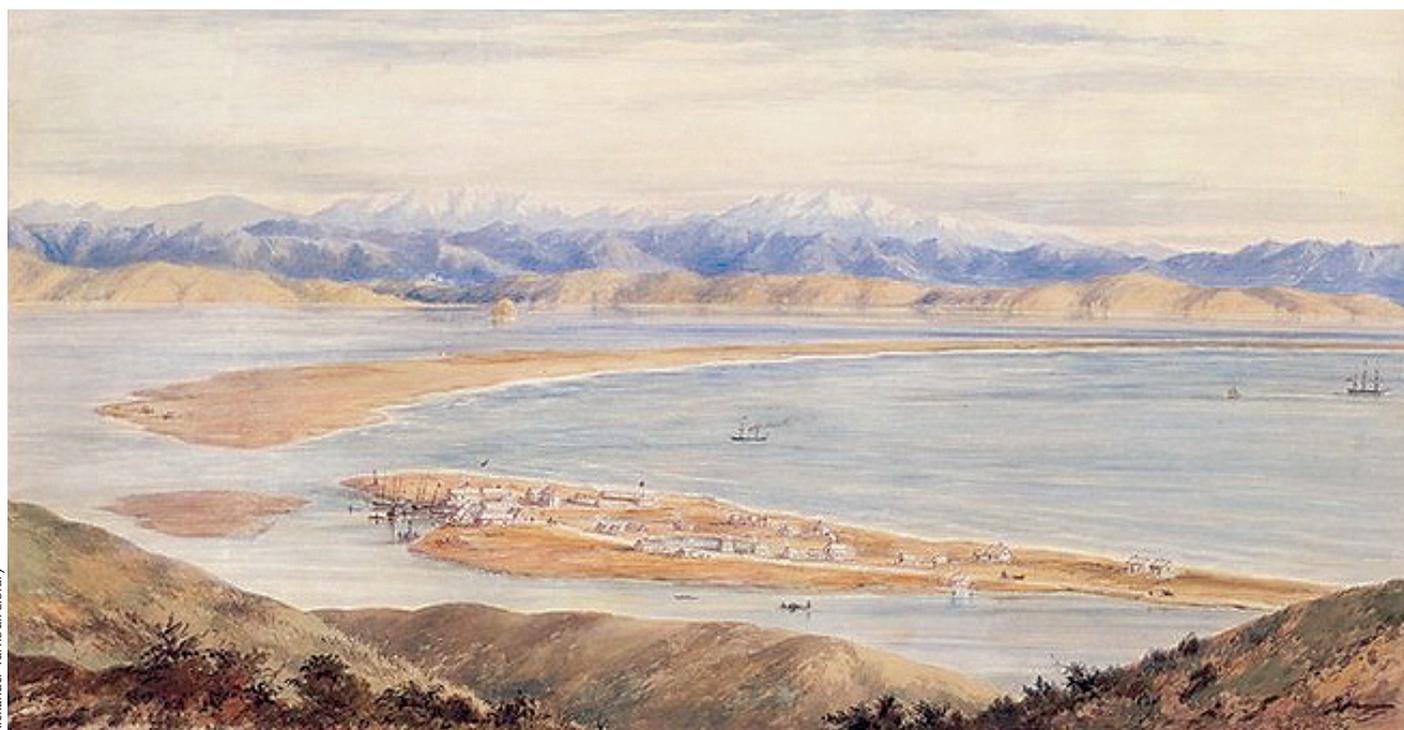
The Crown acted in 2016 by reviewing the ratification process and holding facilitation hui. The result of the hui was a broad agreement to complete the settlement and to hold elections. The Tribunal found that Mana Ahuriri did not have a mandate to complete

the settlement through a 'secret deal' with the Crown that would have seen elections held for only two of nine trustees. It also found that the Crown's acceptance of this secret deal and completion of the settlement on that basis was a breach of Treaty principles.

In respect of the ratification, the Tribunal found that the process to verify special votes was flawed, unfair, and distorted the results in favour of Mana Ahuriri as the post-settlement governance entity. The Tribunal also found that the Crown's acceptance of the ratification results for that entity was in breach of the Treaty.

The Tribunal recommended that the Crown should proceed with the Mana Ahuriri settlement legislation at once but also require Mana Ahuriri to hold an election for all nine Mana Ahuriri trustees before the Bill was enacted. The Tribunal also recommended improvements to the mandate monitoring process to avoid such problems in the future. □

*Watercolour of Te Whanganui a Orotu (Napier Inner Harbour) in 1866 by Charles Barraud*



# Maniapoto Mandate Inquiry Report

**T**HE *Maniapoto Mandate Inquiry Report* was released in pre-publication format in December 2019. The report addressed ten claims, which focused chiefly on whether the Crown breached the Treaty of Waitangi in recognising the Maniapoto Māori Trust Board's mandate to negotiate the Ngāti Maniapoto settlement of historical Treaty claims with the Crown. The Waitangi Tribunal granted an urgent inquiry in November 2018, saying it would consider the Crown's actions during the mandating process with Ngāti Maniapoto from 2013 to 2019, as well as the suitability of the Trust Board's deed of mandate for negotiating the settlement of Ngāti Maniapoto's Treaty claims.

The Tribunal's overall finding was that the Crown's recognition of the Maniapoto Māori Trust Board's mandate was reasonable given the board's community support, infrastructure, and extensive involvement in previous settlements. It was also reasonable in light of the fact that, before September 2016, the Crown had conducted lengthy discussions in good faith with Te Kawau Mārō, the group previously established to seek the Ngāti Maniapoto mandate.

As part of its report, the Tribunal undertook a comprehensive assessment of the mandating process. It found that the Crown had worked extensively with Te Kawau Mārō to progress a mandate for Ngāti Maniapoto negotiations. In September 2016, the Crown ceased working with the group and instead offered the Trust Board the opportunity to seek the mandate as part of a new Crown strategy called 'Broadening the Reach'. The strategy sought to expedite the Treaty settlement process for certain iwi and geographic areas that had not benefited from the comprehensive settlement process at the time



*Panel members (from left) Professor Pou Temara, Judge Sarah Reeves, and Associate Professor Aroha Harris during the Maniapoto Mandate inquiry hearings at the Narrows Landing, Hamilton, 11 July 2019*

and which would otherwise have had to wait many years for settlement. Following a truncated mandating process that took 10 weeks, as opposed to the standard 12 to 18 months, the Crown formally recognised the Trust Board's mandate in December 2016.

The Tribunal found that aspects of the process to recognise the Trust Board's mandate were neither fair nor undertaken in good faith. In particular, the Crown's implementation of 'Broadening the Reach' and its fluctuating position on including Ngāti Apakura in the deed of mandate breached the principles of partnership, reciprocity, and equal treatment. The Tribunal concluded that 'Broadening the Reach' prioritised the Crown's political objectives to complete settlements within a shorter timeframe over its Treaty relationship with Ngāti Maniapoto. The Tribunal also found, however, that the Trust Board's deed of mandate, as it currently stood, was largely adequate for the purpose of negotiations.

The Tribunal did not recommend a

halt to negotiations, but made several practical recommendations to guide the Crown and parties towards reaching an amicable, durable, and robust settlement. These recommendations included providing distinct recognition in the deed of mandate for certain hapū, giving serious thought to post-settlement governance entity options to manage and distribute the Ngāti Maniapoto settlement, adjusting the resourcing and monetary amount for the Ngāti Maniapoto settlement to account for the re-inclusion of Ngāti Apakura, amending the remedies clauses in the deed of mandate, and that the Crown prioritise its relationship with Ngāti Maniapoto by actively having regard to its duty of *whanaungatanga*.

The Waitangi Tribunal heard evidence from claimants, the Crown, and interested parties over two weeks in July 2019 in Hamilton. The panel hearing the claims comprised Judge Sarah Reeves (presiding officer), Professor Pou Temara, and Associate Professor Aroha Harris. □

# Marine and Coastal Area Act Report

**T**HE first report in the Marine and Coastal Area (Takutai Moana) Act 2011 inquiry was released in pre-publication format in June 2020. It concluded the first stage of the Tribunal's kaupapa inquiry into the 2011 Act and its supporting regime. The inquiry was granted priority within the Tribunal's kaupapa inquiry programme to reflect the importance of the customary rights at stake and the immediacy of the Act's alleged impacts on Māori. Hearings took place in March and August 2019 before a Tribunal inquiry panel comprising Judge Miharo Armstrong

(presiding officer), Ron Crosby, Dr Hauata Palmer, and Professor Rawinia Higgins.

The report focuses on whether the procedural arrangements and resources put in place by the Crown to support the Act breach Treaty principles and prejudice Māori. Commencing later in 2020, stage 2 of the inquiry will address broader statutory and policy issues and consider whether the Act itself breaches Treaty principles and prejudices Māori.

Introduced in 2011, the Marine and Coastal Area Act replaced the

controversial Foreshore and Seabed Act 2004. It restored customary title interests extinguished under the earlier legislation and introduced statutory tests and awards whereby customary interests could be identified. Under the Act, Māori can obtain legal rights recognising their interests in the form of either customary marine title or protected customary rights. The Act provides two application pathways for this purpose. Māori can either engage directly with the Crown or apply to the High Court for a recognition order; they can also choose to do



both. In both pathways, applications for customary rights had to be filed by the statutory deadline of 3 April 2017.

During the inquiry, the Crown told the Tribunal it had introduced a framework to support the operation of the Crown engagement pathway when the Act became law, as well as seeking to raise awareness within the Māori world of the legislation and its implications. The Crown also established a funding regime to assist applicants in either pathway with the costs of making applications. During hearings, the Crown announced it would soon begin a comprehensive review of this funding regime, with input from claimants.

However, the claimants alleged that both the Crown's provision of information to Māori and its consultation with Māori on the funding regime were inadequate. The claimants spoke of the distressing and divisive consequences of the two application pathways and their lack of cohesion. They also highlighted issues with the timeliness and flexibility of the funding regime and with the adequacy of the financial assistance available to

applicants. The Crown's decision to only partially cover applicants' costs was a Treaty breach, they claimed.

The Tribunal found that aspects of the procedural and resourcing regime did fall well short of Treaty compliance. Among other things, the regime failed to:

- ▶ provide adequate and timely information about the Crown engagement pathway for applicants to seek recognition of their customary rights in the marine and coastal area;
- ▶ provide adequate policies to ensure

**‘Overall, we conclude that many aspects of the procedural and resourcing regime fall well short of Treaty compliance. This is particularly regrettable given the context in which the Marine and Coastal Area (Takutai Moana) Act was developed – as a replacement for the controversial Foreshore and Seabed Act 2004, which left such a damaging imprint on Māori–Crown relations and the social fabric of Aotearoa New Zealand.’**

—The Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry Stage 1 Report, p x

that the High Court pathway and the Crown engagement pathway operate cohesively;

- ▶ actively and practically support efforts to resolve overlapping interests in the marine and coastal area;
- ▶ cover 100 per cent of all reasonable costs that claimants incur in pursuing applications under the Act;
- ▶ manage real or perceived conflicts of interest in the administration of funding;
- ▶ provide sufficiently independent, accessible, and transparent mechanisms for the internal reviewing of funding decisions;
- ▶ enable timely access to funding for applicants in the Crown engagement pathway; and
- ▶ fund judicial review for Crown engagement applicants and Māori third parties.

The Tribunal found that, in these respects, Māori had been and remained significantly prejudiced. However, it said that other deficiencies in the regime had not ultimately prejudiced the claimants.

The Tribunal urged the Crown to remedy the shortcomings identified in the report. It said that Māori would continue to be prejudiced until the Crown took steps to make the Act's supporting procedural and resourcing arrangements fairer, clearer, more cohesive, and consistent with the Crown's obligations as a Treaty partner. □



# Hauraki Settlement Claims Report

THE Tribunal released the *Hauraki Settlement Overlapping Claims Inquiry Report* in pre-publication format in December 2019. The report addressed claims by four iwi that the Crown failed to undertake a fair process to resolve overlapping interests when negotiating collective and individual settlement deeds with Hauraki iwi.

The Pare Hauraki Collective Redress Deed, which awards shared redress for the collective interests of the 12 iwi of Hauraki, was signed in August 2018. Along with some individual Hauraki deeds, it contains redress that falls within the rohe of Ngāi Te Rangi and Ngāti Ranginui (both Tauranga Moana iwi), and Ngātiwai – three of the claimant iwi in this inquiry. Each iwi claimed that, over several years, the Crown failed to properly consult or share information with them about redress it was proposing for Hauraki iwi. Nor did it adequately support the use of a tikanga-based process to test claimed interests and resolve disputes about the overlapping redress. The claimants said that as a result Hauraki iwi were incorrectly offered redress within their rohe.

A key issue for Tauranga Moana iwi in particular was a provision in the collective deed allowing Hauraki iwi to participate in the Tauranga Moana Framework – an innovative co-governance mechanism for managing and protecting the Tauranga harbour. Over many months, Tauranga Moana iwi strongly opposed Hauraki representation on the Framework's governance group, saying their interests in the moana had not been established. But just days before the Hauraki collective deed was initialled in December 2016, Tauranga Moana iwi discovered by chance that it contained a clause preserving Hauraki iwi's ability to



Tauranga Moana iwi protest the Pare Hauraki Deed of Settlement outside Parliament, 15 May 2018

participate in the group. The Crown refused to remove the clause, and it was one of the catalysts for these iwi to seek an urgent Tribunal inquiry.

The fourth claimant iwi, Ngāti Porou ki Hauraki, were formerly part of the Hauraki Collective, so their grievances differed somewhat from the other three claimant iwi. Their overarching allegation was that the Crown failed to treat them equally to other Hauraki iwi during the Hauraki settlement negotiations. They were particularly aggrieved at the removal of some cultural redress from their individual settlement following an overlapping interests process they said was biased and unsound.

The Tribunal found that the claims of Ngāti Porou ki Hauraki were not well founded, but upheld the claims of Ngāi Te Rangi, Ngāti Ranginui, and Ngātiwai. It found the Crown had breached its Treaty obligations to these three iwi in several ways: by failing to properly consult, communicate openly, and share information with them; by adding redress after reaching initial agreements; by failing to properly promote, allow for, and facilitate tikanga-based processes at the appropriate times; and finally, by

damaging relationships. The Tribunal also criticised the policies and processes guiding the Crown's actions. It agreed with previous Tribunal reports that the Crown's policy document on settlement processes – *Ka tika a muri, ka tika a mua* (the Red Book) – was vague, unhelpful, inaccurate, and unfit for purpose.

The report recommended the Crown halt progress of the legislation giving effect to the Pare Hauraki Collective Settlement Deed, and individual Hauraki iwi settlement deeds, until the contested redress had been through a proper overlapping interests process. It also suggested that the Crown fully commit to and implement Treaty-compliant policies and processes in settlement negotiations, and for the Red Book to be amended accordingly. The report set out substantive new recommendations on the use of tikanga-based processes to resolve overlapping interests.

The hearings took place under urgency in April 2019. The panel appointed to hear the claims comprised Judge Miharo Armstrong (presiding officer), Professor Rawinia Higgins, Dr Ruakere Hond, and David Cochrane. □

# Report on Plant Variety Rights Regime

ON 18 May 2020, the Tribunal released the *Report on the Crown's Review of the Plant Variety Rights Regime*, its second report on Trans-Pacific Partnership Agreement claims, in pre-publication format.

The original claims for this inquiry were lodged in June 2015 by Dr Papaarangi Reid, Moana Jackson, Angeline Greensill, Hone Harawira, Rikirangi Gage, and Moana Maniapoto. At the time, negotiations for the Trans-Pacific Partnership Agreement (TPPA) were underway and the claims were granted urgency. In its *Report on the Trans-Pacific Partnership Agreement*, released on 5 May 2016, the Tribunal adjourned its inquiry into claims about the Crown's process for reviewing the plant variety rights regime for possible later resumption; this report is the outcome.

The plant variety rights regime provides a system under which people who breed a new variety of plant can, under the Plant Variety Rights Act 1987, claim exclusive rights to benefit from that new variety. A review of the regime was required as part of the proposed TPPA and its successor, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

The issue considered during this inquiry was the Tiriti/Treaty-compliance of the Crown's process for engagement over the plant variety rights regime and its policy on whether New Zealand should accede to the 1991 Act of the International Convention for the Protection of New Varieties of Plants. Also known as UPOV 91, the convention provides the foundation on which member states, including New Zealand, rely to promote plant breeding by granting plant variety breeders a right to intellectual property.

Claimants told the Tribunal that



Ministry of Business, Innovation and Employment

neither the Crown's engagement process nor its policy on UPOV 91 were consistent with its Tiriti/Treaty obligations of partnership and protection. For its part, the Crown argued that its engagement process, consistent with its CPTPP obligations, was Tiriti/Treaty compliant. The Crown said that the outcomes of the review meet, and in fact exceed, the relief originally sought by the claimants in this inquiry (that there be meaningful engagement with Māori, and the recommendations in the Tribunal's *Ko Aotearoa Tēnei* report regarding plant variety rights be implemented).

The Tribunal did not uphold the claims of Tiriti/Treaty breach and considered that the Crown's policy was, on the whole, reasonable. The Tribunal welcomed Cabinet's decision not only to implement the relevant findings and recommendations about plant variety rights in *Ko Aotearoa Tēnei*, but to go further by providing additional measures to recognise

and protect the interests of kaitiaki in taonga species and in non-indigenous species of significance.

The Tribunal noted that it is 'unprecedented' in its experience for claimants to oppose the Crown when it seeks to implement the recommendations of the Tribunal. The Tribunal recognised that this is likely to arise from 'long standing frustration that in the negotiation of international treaties, the Māori perspective is at the margins, required to react as best it can to timeframes and an agenda set by the Crown (and others)'. Accordingly, the Tribunal said it would return to these issues in the final stages of the inquiry later this year, when issues of engagement and secrecy will be addressed.

The Tribunal comprised Judge Michael Doogan (presiding officer), Tā Hirini Moko Mead, Tania Simpson, Kim Ngarimu, and David Cochrane. The hearing on this part of the claims took place from 4 to 6 December 2019. □

# Inquiry Programme Overview

FROM July 2019 to June 2020, the Tribunal's inquiry programme has seen steady progress in all areas, despite the postponement of hearings in the final four months due to the Covid-19 pandemic crisis. Between July and December 2019, four urgent inquiries were completed with the release of their reports. With just one new urgent inquiry starting, by June 2020 the number of urgent inquiries had reduced to two.

During the year, the Tribunal's two regular inquiry programmes expanded with the launch of the new North-Eastern Bay of Plenty district inquiry and the Mana Wāhine and Housing Policy and Services kaupapa inquiries. Developments during the year included the use of a staged inquiry process to enable prioritised issues to get an early hearing and a report and also a more collaborative approach to inquiry planning between the claimants and the Crown. In all, at year end 17 inquiries involving more than a thousand claims were under way.

*Hemi Te Peeti, named claimant for the Ngāti Whakarete ki te Tonga claim, speaks at the start of the Porirua ki Manawatū inquiry hearings at Hato Pāora College, near Feilding. In this third phase of the inquiry, the Tribunal is hearing the claims of Ngāti Raukawa and affiliated groups.*



Whare Ākūhata, Te Hono ki Raukawa

## Applications

Applications for urgency, which peaked in 2017, continued their declining trend. The majority related to current issues of Crown policy and practice, with few arising from Treaty settlement negotiations.

Overall, the number of applications on hand dropped from 22 claims in June 2019 to eight cases involving 17 claims in June 2020. Of these, proceedings in two cases (three claims) stood adjourned, and three remedies cases (11 claims) for which the claimants were seeking urgency were under consideration.

## Urgent inquiries

The year began with no fewer than six urgent inquiries under way. Most were well advanced and four completed their proceedings by the end of 2019. A single new urgent inquiry commenced during the 2019–20 year.

Of the inquiries into claims concerning the Crown's Treaty settlement negotiations:

- ▶ The Tribunal released its pre-publication report on the **Hauraki Overlapping Claims** inquiry in December 2019.
- ▶ The **Maniapoto Mandate** Tribunal completed its hearings in September 2019 and released its pre-publication report in December 2019.
- ▶ The **Mana Ahuriri Mandate** Tribunal released its pre-publication report in December 2019.
- ▶ The Tribunal inquiring into the **Ngā Hapū o te Moutere o Motiti** claim concluded its hearings in September 2019 and is preparing its report.

Two urgent inquiries concerned issues of national policy alleged to prejudice Māori:

- ▶ The Tribunal released its pre-publication report on the **Māori Prisoners' Voting Rights** claim in August 2019 and published the report in June 2020.
- ▶ In October 2019, the chairperson granted an urgent hearing of claims concerning the disproportionately high and rising number of tamariki Māori being taken into State custody. The **Oranga Tamariki** Tribunal has completed its preparations for hearings, which are scheduled to start in July 2020.

## 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 **Mangatū Remedies** inquiry

is considering applications for the return of Crown forest land inland from Gisborne. The Tribunal has been writing its report in parallel with an iterative process to clarify the parties' positions on ways of implementing the Tribunal's recommendations, as well as mediation to work towards agreed solutions.

► 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 the Maraetai Hydro Power Station owned by Mercury Energy. The other is for the return of Crown forest land in the Ngāumu Forest east of Masterton. The Tribunal completed its hearings between July and December 2019 and released its preliminary determinations in March 2020. Two months later, Mercury, which had earlier applied for a judicial review of the Tribunal's decision to decline leave for it to be heard and file evidence, expanded its claim to challenge the Tribunal's determination in respect of Pouākani 2. The High Court proceeding has been scheduled for hearing in October 2020.

The status of the Ngāti Kahu inquiry, formerly categorised as an urgent remedies inquiry, has changed (see below).

## District inquiries

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

► **Ngāti Kahu Remedies:** Following the recusal in 2018 of the Ngāti Kahu Remedies presiding officer and panel, the chairperson appointed a new panel to conduct the remedies inquiry. The Ngāti Kahu applicants' claims had been



Waitangi Tribunal member Dr Monty Soutar, supported by other panel members and staff, at the opening of the Porirua ki Manawatū hearings in March. The hearings are set to resume later in 2020.

reported as well-founded in the 1997 *Muriwhenua Land Report*. Since then, most iwi in the district have negotiated Treaty settlements with the Crown. In March 2020, the panel conducting the renamed **Renewed Muriwhenua Land** inquiry confirmed that, before considering claimants' applications for remedies, it would inquire into claims relating to the Muriwhenua district that had not been heard in the original inquiry.

► **Te Rohe Pōtae (King Country):** The Tribunal is releasing *Te Mana Whatu Ahuru*, its report on Te Rohe Pōtae claims, in pre-publication batches. Parts 1 and 2 were released in September 2018 and part 3 in June 2019. Part 4 appeared in December 2019, part 5 in June 2020. The final part, part 6, which examines regionally specific claims, is expected to be completed in late 2020.

► **Te Paparahi o te Raki (Northland):** Hearings in stage 2 of Te Raki, involving more than 400 claims and covering all post-1840 claim issues, concluded in October 2017. The filing of written closing submissions and replies was completed over the following year and the Tribunal is now preparing its report.

► **Taihape:** The Tribunal held three further Taihape hearings during the year and has completed its hearing of claimant and Crown evidence. The hearing of closing submissions is expected to finish in late 2020 or early 2021. A priority Tribunal report on landlocked land is in preparation.

► **Porirua ki Manawatū:** In the second phase of the Porirua ki Manawatū inquiry, focusing on the claims of Te Āti Awa/Ngāti Awa ki Kāpiti, the Tribunal held its final

hearing in August 2019, received written closing submissions, and is preparing its report. In May 2020, the Tribunal released a separate pre-publication report on the Kārewarewa urupā in advance of the iwi volume.

In the third phase, the Tribunal is hearing the claims of Ngāti Raukawa and affiliated groups, other claimants not yet heard, and issues affecting Māori across the district as a whole. The final Tribunal-commissioned research reports were filed by August 2019. Following a period to finalise claims and issues and to plan the hearing programme, the Tribunal held its first hearing in March 2020. Hearings are scheduled to resume in September 2020.

- ▶ **North-Eastern Bay of Plenty:** In June 2019, the chairperson appointed a Tribunal panel to conduct a district inquiry into claims in the southern part of the North-Eastern Bay of Plenty district, Te Whānau-ā-Apanui having confirmed in late 2016 that they would not seek a Tribunal inquiry into their claims. Inquiry planning is well advanced, a first commissioned research report on raupatu is nearing completion, and the presiding officer has confirmed a casebook research programme.

In September 2018, the chairperson began a **standing panel inquiry into remaining historical claims** that claimants may still want to bring before the Tribunal for claims that were filed after districts completed their hearings or that related to districts where most claims were settled without hearings.

In March 2019, the chairperson appointed a standing panel for the region covering the south-western North Island, the South Island, and the Chatham Islands. Claimant eligibility to participate has been considered, research needs have been assessed, and preparation has started.

## Kaupapa inquiries

Kaupapa inquiries hear claims that relate to significant national issues affecting most or all Māori. During the year, five inquiries continued and two new inquiries started:

- ▶ **National Freshwater and Geothermal Resources:** In August 2019, the Tribunal released its stage 2 pre-publication report on the Crown's freshwater reform programme.

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

- ▶ **Health Services and Outcomes:** The Tribunal's pre-publication stage 1 report on the legislative framework and funding process for primary healthcare, released on 1 July 2019, was published in August 2019. The Tribunal asked the parties to discuss its recommendations concerning historical underfunding and the creation of an independent Māori health authority, and the claimants and the Crown are submitting progress reports on implementation.

The last research report commissioned by the Tribunal for stage 2 of the inquiry was filed in December 2019. In stage 2, the Tribunal will focus on three priority issues. In October 2019, the Tribunal decided first to hear and report on all disability issues and then to hear mental health and alcohol, tobacco, and substance abuse issues jointly. Preparations for the disability hearings are under way.

- ▶ **Marine and Coastal Area (Takutai Moana) Act:** In July 2019, the Tribunal held its final stage 1 hearing of claims about the Crown's processes for customary rights recognition in the coastal and marine area, including the resources provided by the Crown for Māori to participate. The report was released in pre-publication format in June 2020.

Meanwhile, planning has proceeded for stage 2, which will focus on the Treaty compliance of the Marine and Coastal Area (Takutai Moana) Act 2011 and also Crown policy and practice. Hearings are due to start in September 2020.

- ▶ **Trans-Pacific Partnership Agreement:** The Tribunal continued its inquiry into four outstanding non-urgent issues arising from claims about the revised Comprehensive and Progressive Agreement for Trans-Pacific Partnership. In December 2019, the Tribunal heard claims about the Crown's process for reviewing the plant variety rights regime and released a pre-publication report in May 2020 in order to provide its findings ahead of the introduction of legislation on this matter. The Tribunal is currently preparing to hear the three remaining issues.

- ▶ **Mana Wāhine:** Following preliminary consultation with claimants and the Crown, in August 2019 the chairperson appointed a Tribunal panel to inquire into claims concerning Māori women. Preparations for the inquiry are under way and the Tribunal is consulting the claimants and the Crown on claimant eligibility and representation, how the inquiry should proceed, its scope, and any potential overlap with the Oranga Tamariki urgent inquiry.

- ▶ **Housing Policy and Services:** In August 2019, the chairperson also appointed a Tribunal panel to inquire into claims about Crown housing policy and services. Preparatory work and consultation on inquiry design have begun, but the claimants' national housing hui planned for March 2020 had to be cancelled as a result of the Covid-19 pandemic. A large number of claimants have requested that Māori homelessness be prioritised in a first stage of the inquiry, and the Tribunal is consulting the parties on this proposal. □

# Progress in Tribunal District Inquiries

July 2020

