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 64

Waitangi Tribunal

Kei Roto | Inside

From the Chairperson

Tēnā koutou. The Waitangi Tribunal has been part of our legal framework since 1975. It has not been static and its strategic direction and focus have changed as the times and circumstances have demanded. There have been dramatic changes, as with the expansion of our jurisdiction to consider historical claims in 1985 and the move to a district-based inquiry model in the mid-1990s, and more gradual changes, as we adjusted our inquiry process to ensure that we could hear and report on the claims before us in the most meaningful, relevant, and efficient manner. Examples of these gradual changes are the introduction in 2000 of the 'new approach' to hearing historical claims and the ngā kōrero tuko iho hearings of claimants' traditional evidence in the Te Rohe Pōtae inquiry.

We are now approaching another time of change, as we move towards the completion of our district inquiries and turn the focus of our inquiry programme to both nationwide kaupapa claims and contemporary issues. This shift in focus will, in my view, be the most significant change to occur in the Tribunal's hearing programme since we commenced our district inquiries, and we will continue to keep you informed of all developments as we navigate towards our new phase of inquiry.

However, as we work towards this end, we must also give our attention to an unprecedented number of urgent claims and remedies hearings, which have increased as the Crown's settlement activity has increased. As a result, the Tribunal has had to give the highest priority to the hearing of these claims, which will necessarily require a longer timeframe than previously anticipated for the hearing of current district inquiries.

One thing that must be clear, however, is that, while our procedure and priorities may change, the Tribunal's kaupapa remains the same as it was in 1975 – to provide an independent, impartial, and public forum to which Māori can bring their claims concerning Crown policies and actions that they allege are in contravention of the Treaty of Waitangi. In so doing, our role is to ensure that past breaches of the Treaty are acknowledged and addressed and that the partnership between Māori and the Crown established by the Treaty is monitored and sustained for the health and wellbeing of New Zealand in the present moment and in the years to come. □

From the Director

Tēnā koutou kātoa. I welcome you to *Te Manutukutuku*, the official newsletter of the Waitangi Tribunal. Since our last edition, published in July 2009, a lot has happened both within the Tribunal and more widely in the Treaty claims environment. I am pleased and privileged to have the opportunity to present some of these developments to you, and to do so as we celebrate the rise of Matariki and a fresh beginning for us all.

It is my privilege also to pay tribute to my predecessor, Darrin Sykes, who joined the Waitangi Tribunal Unit as director in 2004 and led the unit through a period of great momentum. This included the publication of 25 Tribunal reports and the conclusion of six district inquiries. Darrin left the unit in February 2010 to take up the position of director at the Crown Forestry Rental Trust, and I know that many of you have continued your work with him in his new role.

The past few years have seen us welcome three new Tribunal members and a new Māori Land Court judge, whom we will introduce you to in this bumper edition. During this period, we said farewell to a further six members who, upon the conclusion of their respective inquiries, were able to retire from the Tribunal duties to which they had freely given of their service over many years – *ngā mihi nui ki a koutou* – we pay tribute to you all. And we also honour our kaumātua member Tuahine Northover, who sadly passed away on 6 April 2011 – *e moe mai, moe mai e te rangatira*.

Over the next few editions of *Te Manutukutuku*, it will be my pleasure to introduce our new senior management team. I have been tremendously fortunate to be supported by a mix of familiar and new faces, who among them bring more than five decades of Treaty-based experience to the unit. Our chairperson has spoken about the exercise in prioritisation currently facing the Tribunal as it grapples with

the consequences of an unusually high number of urgency and remedies applications before it. You have my firm assurance that the whole of the unit remains committed to supporting the Tribunal in completing its district inquiry programme and the timely hearing and resolution of your historical Treaty claims. □

New Tribunal Leadership

In our special, people-focused December 2008 edition of *Te Manutukutuku*, we reported on the appointment of our former Tribunal chairperson and chief judge of the Māori Land Court, Joe Williams, as a judge of the High Court. His successor, Judge Wilson Isaac, was appointed chief judge of the Māori Land Court in August 2009 and chairperson of the Tribunal the following month.

Before his appointment to the Māori Land Court in 1994, Chief Judge Isaac had an extensive Gisborne-based practice in Māori land law as a partner in Burnard Bull and Company. He became deputy chief judge of the court in 1999 and was appointed presiding officer in the Tribunal's Mohaka ki Ahuriri and Te Tau Ihu o te Waka a Māui (northern South Island) inquiries. He continues to sit as the presiding officer in the Tribunal's National Park and Taihape inquiries, and as the resident judge in the Wairoa Māori Land Court, in addition to his duties as chairperson and chief judge.

With the departure of Deputy Chairperson Judge Carrie Wainwright (see story page 6), Judge Stephanie Milroy was appointed Tribunal deputy chairperson on 14 May 2010. Prior to her appointment to the Māori Land Court in 2002, Judge Milroy was a senior law lecturer at Waikato University and an associate partner at Harkness Henry and Company. Since her appointment, she has sat as the presiding officer in the Tribunal's Tauranga Moana and Te Wānanga o Aotearoa inquiries, and she is currently the presiding officer in the Tūranganui-a-Kiwa remedies hearing. Judge Milroy is also the resident judge in the Māori Land Court's Waikato–Maniapoto district. □

New Members and Presiding Officers

Judge Sarah Reeves

Judge Sarah Reeves (Te Atiawa) was appointed to the Māori Land Court in September 2010, and presides in the Te Waipounamu district.

After graduating with a law degree from Otago University, Judge Reeves was admitted to the bar in 1985. She has practised in New Zealand, Rarotonga, Singapore, and Hong Kong, specialising in commercial and property law. Immediately prior to her appointment to the bench, she acted as senior in-house counsel for the Auckland City Council. As a judge of the Māori Land Court, Judge Reeves became presiding officer in the Raukawa ki Waikato settlement inquiry in October 2011.

Sir Tamati Reedy

Before his appointment to the University of Waikato in 1996 as foundation dean and professor to establish a School of Māori and Pacific Development, Professor Sir Tamati Reedy (Ngāti Porou) had already had a distinguished career as a professional educationalist, academic, and former top public servant. A Fulbright Scholar, he served as associate professor at the University of Alabama from 1982 to 1983. On returning to New Zealand, he was chief executive and secretary of the Department of Māori Affairs from 1983 to 1989, and was awarded the New Zealand Medal in 1990 for public service. In 2009, he became the first Māori to be awarded the title emeritus professor by the University of Waikato. Professor Reedy was appointed to the Tribunal in May 2010.

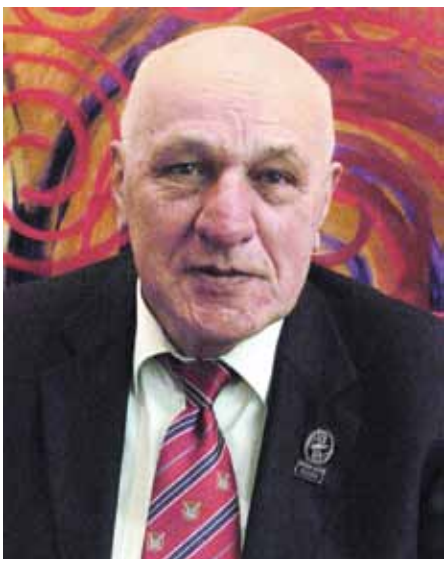
Dr Grant Phillipson

The Tribunal welcomed Dr Grant Phillipson as a new member in January 2011. Dr Phillipson's professional involvement with the work of the Tribunal extends over nearly two decades, beginning in 1993 when he joined the Waitangi Tribunal Unit as a commissioned researcher. In 1995, he was appointed research manager and, two years later, chief historian – a role that he held until his appointment to the Tribunal. During the course of his career, Dr Phillipson has written numerous research and historical reports, commissioned variously by the Waitangi Tribunal, the New Zealand Māori Congress–Crown Joint Working Party, the Crown Forestry Rental Trust, and Māori claimant communities. These reports have featured prominently in a number of district inquiries, most notably the Te Tau Ihu o te Waka a Māui (northern South Island) and Rekohu (Chatham Islands) inquiries. As chief historian, Dr Phillipson was responsible for supervising the Tribunal's commissioned research and report writing programmes, in addition to providing research and report writing advice to numerous Tribunal panels.

Outside his work for the Waitangi Tribunal Unit and as a commissioned researcher, Dr Phillipson has also published a number of distinguished academic papers. These include an account of the different types of evidence presented to the Tribunal in *The Waitangi Tribunal: Te Roopu Whakamana i te Tiriti o Waitangi*; a study of the Church Missionary Society's role

Judge Sarah Reeves

Professor Sir Tamati Reedy



Dr Grant Phillipson

in the Kerikeri region up to the mid-nineteenth century in *Te Kerikeri, 1770–1850 : The Meeting Pool*; and an appraisal of how Bishop George Selwyn has featured in reports to and by the Tribunal in *A Controversial Churchman : Essays on George Selwyn, Bishop of New Zealand and Lichfield*, which continues an interest in Bishop Selwyn that began with Dr Phillipson's doctoral thesis, completed in 1992. His study of the origins of the Native Appellate Court featured in last year's *New Zealand Journal of History*.

Kaa Williams

Her appointment to the Waitangi Tribunal in August 2011 marked yet another professional milestone for our newest member, respected kaumatua Kaa Williams (Ngāi Tūhoe, Ngāti Manawa, Ngāti Kahungunu, Ngāti Maniapoto). A lifetime of contribution to the community in many capacities, including over four decades' experience in te reo Māori education and teacher training, saw Mrs Williams receive the Queen's Service Order in 2009 for services to Māori.

Mrs Williams was involved in the establishment of the first bilingual school in New Zealand – the precursor to kohanga reo and Māori-medium immersion schools – and, in recent years, has had responsibility for translating the NCEA mathematics curriculum into te reo Māori.

Mrs Williams is a Māori-language examiner for Te Taura Whiri i te Reo Māori (the Māori Language Commission) and a consultant for Māori-language television programmes, including the children's television series *Manu Rere*. She is also a founding member of the Tūhoe Education Authority.

Kaa Williams

Ronald Crosby

Ronald Crosby was appointed to the Tribunal in August 2011. In addition to having a distinguished career in the legal profession – initially practising in Auckland and, from 1975 to 2007, in the firm of Gascoigne Wicks in Blenheim – over the last decade Mr Crosby has been increasingly occupied with writing New Zealand historical and military books. His published works include: *The Musket Wars*; *Gilbert Mair : Te Kooti's Nemesis*; *Andris Apse : Odyssey and Images*; *Albaneta : Lost Opportunity at Cassino*; and *NZSAS : The First Fifty Years*. He has also contributed a chapter on the resource management experiences of the Te Tau Ihu iwi to *Whenua : Managing our Resources*, and a chapter on Gilbert Mair to *Māori Treasures of New Zealand : Ko Tawa*.

Over the course of his legal career, Mr Crosby appeared in most of the courts in New Zealand and twice before the Privy Council. In the Treaty area, he was involved in the lengthy and complex litigation associated with the long-running Tribunal inquiry into Te Tau Ihu o te Waka a Māui (the northern South Island), as well as a range of cases involving Māori interests in resource management.

Despite retiring from the practice of law to focus on his writing, Mr Crosby continues to maintain an active professional schedule. As a hearings commissioner under the Resource Management Act, he is responsible for considering applications on coastal and land-based issues, and particularly cases involving iwi issues for various South Island authorities.

Ronald Crosby and his wife, Margy

Mr Crosby is currently a member of the kōhanga reo and Raukawa ki Waikato settlement inquiry panels.

NAU MAI HAERE MAI to these new members. We also congratulate the following eight Tribunal members on their reappointment in August 2011 for further three-year terms: Dr Monty Soutar (Ngāti Porou, Ngāti Awa); Kihi Ngatai (Ngāi Te Rangi, Ngāti Ranginui); Tania Simpson (Ngāti Manu, Ngāti Maniapoto); Dr Aroha Harris (Te Rarawa, Ngāpuhi); Professor William (Pou) Temara (Ngāi Tūhoe); Timothy Castle; Basil Morrison; and Dr Richard Hill.

As the Minister of Māori Affairs, the Honourable Dr Pita Sharples, noted, 'It is encouraging to have such high-calibre candidates being appointed and reappointed to the Tribunal . . . All appointees possess a wealth of the experience and skills that make the Tribunal so effective.' □

Our Distinguished Membership

In the three years since our last edition, a number of our members have been recognised for the contributions that they have made to their communities and to public life. Included among them are:

Sir Doug Kidd

Sir Douglas Kidd was first appointed to the Tribunal in 2004. The 2009 restoration of knighthoods to the New Zealand Honours system saw the former Cabinet Minister and Speaker of the House appointed the Honourable Sir Douglas Kidd in a ceremony at Wellington's St Paul's Cathedral.

Sir Hirini Moko Mead

Professor Sir Hirini Moko Mead, who was first appointed to the Tribunal in 2003, was the founding professor of Māori at Victoria University of Wellington and was responsible for creating the first department of Māori studies in Aotearoa. In 2007 Professor Mead was made a Distinguished Companion of the New Zealand Order of Merit for his services to Māori and to education. He became a Knight Companion of the Order in August 2009.

Sir Tamati Reedy

Professor Sir Tamati Reedy, who was first appointed to the Tribunal in 2010, has had a distinguished career in Māori affairs from a range of perspectives – public, private, and academic. Thus, in the 2011 New Year Honours List he was made a Knight Companion of the New Zealand Order of Merit for his services. Sir Tamati was presented with his insignia at Hiruharama Marae, Ruatoria, in May 2011.

Wharehuia Milroy

A lifetime of service to the Māori language has seen Professor Wharehuia Milroy, first appointed to the Tribunal in 1998, made a Companion of the New Zealand Order of Merit in the 2012 New Year Honours List.

Te Waka Toi Awards

The Creative New Zealand Te Waka Toi Awards of 2011 also honoured two of our esteemed Tribunal members: Professor Sir Hirini Moko Mead and Emeritus Professor Sir Tamati Reedy. The awards recognise achievement in the Māori arts.

Professor Mead received the Te Tohu Aroha mō Te Arikinui Dame Te Atairangikaahu Te Waka Toi Exemplary Award, presented to him by the Māori King, Te Arikinui Kingi Tuheitia. This prestigious award recognises the commitment that Sir Hirini has made throughout his lifetime to passing on artistic knowledge, and the overall exemplary contribution he has made towards the retention and development of Māori arts.

Sir Tamati Reedy was recognised for his lifelong promotion of te reo Māori with Te Tohu Aroha mō Ngoi Kumeroa Pewhairangi: 'Whakarongo, Titiro, Kōrero'. Acknowledged as having an incomparable command of te reo Māori, in accepting his award, Sir Tamati credited his grandparents with his lifelong passion for the language. □

The Honourable Sir Douglas Kidd

Professor Sir Hirini Moko Mead

Professor Wharehuia Milroy

Departing Members

The conclusion of the Wairarapa ki Tararua, Tauranga Moana, and Wai 262 inquiries saw the departure of a number of Tribunal members.

Judge Carrie Wainwright, who presided over the Wairarapa inquiry, was sworn in as a judge of the District Court on 30 September 2010. With that appointment, Judge Wainwright stepped down from her role as the Tribunal's deputy chairperson and as a full-time member of the Tribunal and Māori Land Court bench. During her tenure, Judge Wainwright was the presiding officer on seven Tribunal panels, including the Wairarapa ki Tararua, foreshore and seabed policy, and Tāmaki Makaurau settlement process inquiries. She remains the presiding officer of the Whanganui inquiry.

The release of the Wairarapa report also saw Dame Margaret Bazley's Tribunal membership come to an end. Since her appointment in 2001, Dame Margaret had served on the Wairarapa ki Tararua and Turanganui a Kiwa district inquiries and the Ngāti Awa settlement, aquaculture and marine farming, Ngāti Tuwharetoa ki Kawerau settlement, and Te Tai Hauauru by-election inquiries. She was also a long-serving and valued member of the Tribunal's Governance Group.

Three other long-serving members – Professor Keith Sorrenson, John Clarke, and Areta Koopu – left with the ending of the Tauranga Moana inquiry in 2010. Professor Sorrenson's service to the Tribunal is noted elsewhere in this issue (see facing page). John Clarke (Ngāti Porou, Ngāpuhi) was appointed to the Tribunal in 1995 and, over his 16 years as a member, sat on nine panels, including the Te Whanganui-ā-Tara me ona Takiwā, Mohaka ki Ahuriri, Te Tau Ihu, and foreshore and seabed policy inquiries. Areta Koopu (Ngāti Kahu, Ngāti Konohi, Te Aitanga-a-Hauiti) was appointed to the Tribunal in 1996, and sat on four Tribunal panels, including the Kaipara and Mokai School inquiries.

The release of the Wai 262 report also saw the departure of two Tribunal members who had served as a part of the inquiry panel since its constitution in 1997. Roger Maaka (Ngāti Kahungunu, Ngāi Tahu) sat on four panels in addition to Wai 262 over the course of his membership, including the Mohaka ki Ahuriri inquiry. Pamela Ringwood also sat on three further panels in her time as a member, including the Te Tau Ihu and Te Whānau o Waipareira inquiries. □

New Registrar

Keriana McGregor (Ngāti Kahungunu ki te Wairoa) recently joined the Waitangi Tribunal in the newly recast position of registrar. Keriana comes to us with an extensive background in indigenous peoples' policy and negotiations.

After nearly 10 years living in Canada and working for the Federal Government on First Nations issues, Keriana and her husband decided in 2009 that the time was right to return to Aotearoa with their two young sons, Zak and Tama.

'It has always been important for me that my sons understand and appreciate their Māori identity and returning home to "live it" was the only way I felt they could truly know who they are. They are proud to be Māori and proud to be Kiwis.'

After returning home, Keriana worked with the Office of Treaty Settlements for almost two years as a principal adviser, in which role she was closely involved in negotiations in Tāmaki Makaurau. She then moved to the Ministry of Social Development, working in the area of social housing, before joining the Waitangi Tribunal.

Keriana says that the role of registrar ticked all the boxes for her: 'With my legal background and passion for indigenous issues, this feels like the perfect job for me. I'm looking forward to the new role. It's an exciting time and I feel privileged to be a part of the Tribunal team.' □

Urgency and Remedies Applications

The registrarial team is responsible for managing the claims registration process, providing advice on procedural issues relating to registration, and ensuring the integrity of the Tribunal's record of inquiry.Where claims lack sufficient information for their registration, the team can assist claimants to provide the necessary information.

The registrarial team also provides support to the Tribunal's district inquiry teams and panels.

The last 12 months in particular have been very busy, as the chairperson noted in his opening address. The Tribunal unit has been, and still is, processing an unprecedented number of applications for urgent hearings.

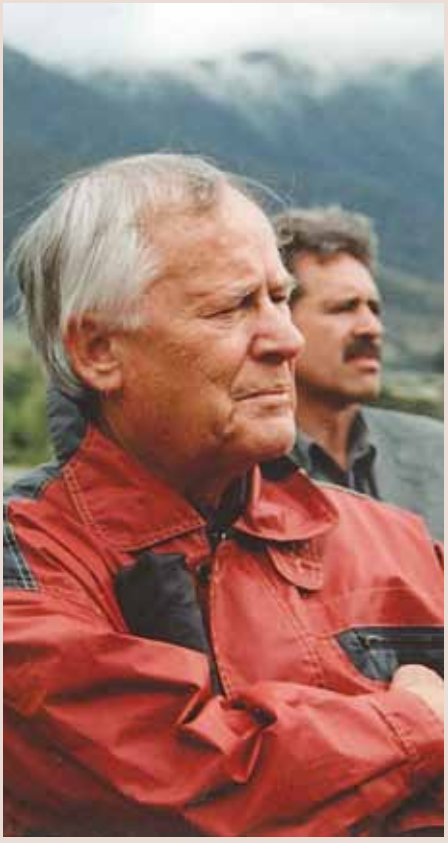
The Tribunal considers a number of factors when assessing whether to grant an application for an urgent hearing. Of particular importance is whether:

- the claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;
- there is no alternative remedy that would be reasonable for the claimants to use; and
- the claimants are ready to proceed urgently to a hearing.

Because the claimants allege that they will suffer significant and irreversible prejudice, urgent applications take priority over usual Tribunal business.

The chairperson's recent memorandum–direction of 26 April 2012 has emphasised to all parties in claims currently before the Tribunal that in the short term the urgent inquiry programme must continue to be an immediate focus of priority for the Tribunal. It reassures the parties that the Tribunal remains committed to progressing its district inquiry programme, however, and that increased momentum in this area will resume as soon as possible. □

Professor Sorrenson's 24 Years' Service



The publication of the report *Tauranga Moana, 1886–2006* in 2010 (see page 10) marked the end of Professor Keith Sorrenson's 24 years of service with the Tribunal. As a leading authority on the history of Crown–Māori relations, Professor Sorrenson was an ideal appointee to the Tribunal in 1986, after the retrospective extension of the Tribunal's jurisdiction to 1840.

Professor Sorrenson served on many inquiries – Ōrākei, Mangonui sewerage, Muriwhenua fishing, Ngāti Rangiteaorere, Māori electoral option, Te Whanganui ā Tara me ona Takiwā, Taranaki, allocation of radio frequencies, Ngāti Awa Raupatu, Mōhaka ki Ahuriri, Napier Hospital, Te Tau Ihu o te Waka a Māui, and Tauranga Moana – and may well have attended more hearing days than any other member.

As the Tribunal's leading historian member, Professor Sorrenson made other significant contributions such as assessing the adequacy of research casebooks to proceed to hearing. Looking back, he says he 'quickly learned how much more there was to Māori land grievances' than he was aware of when he wrote his seminal thesis in 1956 on late nineteenth-century Māori land purchases.

Professor Sorrenson always found it 'a great relief, and an enlightening and uplifting experience' to step away from his busy life as head of Auckland University's Department of History to attend hearings on marae and to work with such distinguished Tribunal members as kaumātua Sir Monita Delamere and Bishop Manu Bennett, Chief Judge Sir Edward Durie, and Professor Gordon Orr.

The Tribunal thanks Professor Sorrenson for his work and wishes him and his wife Judith all the very best for the future. □

The Tribunal's Inquiry Programme

As the number of Treaty claims continues to expand, many are moving towards settlement. Diversity and customised processes are becoming hallmarks of the Tribunal's inquiry programme as it adapts to the varied aspirations of claimants.

Since former chairperson Justice Eddie Durie launched the district inquiry programme in the mid-1990s, the Tribunal has given priority to hearing claims jointly in district and regional inquiries. This programme has come a long way over the past 15 years:

- Reports have been issued on 17 of the Tribunal's 37 districts, covering 76 per cent of New Zealand's land area.
- The 12 districts currently in or preparing for inquiry will bring that coverage up to 91 per cent.
- In the remaining eight districts, the principal iwi or hapū either have settled their claims or expect to negotiate settlements without Tribunal involvement.

Alongside the district inquiries, the Tribunal has heard a wide range of claims granted urgency. In recent years, the tempo of applications for urgency and remedies has been increasing (see page 7).

Recent reports

During the past three years, reports have been released on two major district inquiries. The Wairarāpa ki Tararua Tribunal released its report in June 2010 (see page 16). Three months later, the Tauranga Moana Tribunal released its report on post-1886 claims (see page 10).

In the long-running Te Urewera district inquiry, the first two parts of the Tribunal's report were released in pre-publication format in April 2009 and July 2010 in response to a joint request from the Crown and Tūhoe.

In June 2011, the Tribunal issued its wide-ranging report on the Wai 262 claim, which concerned law and policy affecting Māori culture and identity and indigenous flora and fauna (see page 12).

Two recent urgent inquiries have also produced Tribunal reports. The first (March 2010) was on claims contesting the Ngāti Porou's Treaty settlement (see page 15). The second (December 2010) addressed a kaupapa issue, the management of the petroleum resource (see page 14).

Reports in preparation

Completing reports on claims already heard is a top priority to which the Tribunal has committed substantial resources. Two major district reports are scheduled for release in 2012.

- The *Te Urewera* Tribunal intends to issue in pre-publication format part 3 of its report, covering the Urewera district native reserve, Crown land purchasing, title consolidation, and the national park, in the second quarter of 2012. After that, further chapters will be issued covering the arrest of the prophet Rua Kenana, land development schemes, native timber, the environment and waterways, and socio-economic issues.
- The *Tongariro National Park* report (see page 22) is due for release in late 2012.
- The report on stage 1 of the *Te Paparahi o te Raki* (Northland) regional inquiry, concerning He Whakaputanga (the Declaration of Independence) (1835) and Te Tiriti (the Treaty of Waitangi) (1840), is due in 2013 (see also page 21).
- The *Whanganui* Tribunal intends to release its report in 2013, focusing on nine key topics (see page 22).

District inquiries

Four North Island district and regional inquiries are underway involving many hundreds of claims:

- The *Te Paparahi o te Raki* (Northland) inquiry is in interlocutory proceedings to prepare for stage 2 hearings. The main focus is on defining the generic big-picture issues to be heard in the first round of hearings. They will lead into sub-regional hearings of local and specific issues.
- The *Te Rohe Pōtae* (King Country) inquiry held ngā kōrero tuku iho hearings of claimant evidence in 2010 and has completed its research casebook. It is now in its interlocutory phase, with main hearings to start in September 2012.
- The *Taihape* inquiry is in the early stages of its casebook research programme, which is targeted for completion by early 2013.
- In the *Porirua ki Manawatū* inquiry, the Tribunal has been consulting the parties on the type of inquiry they would prefer and the research required. A casebook research programme is likely to be finalised and get underway in 2012.

Urgent inquiries

Six urgent inquiries are currently underway:

- The *Kōhanga Reo Trust* claim concerns the impact of Crown actions and policy changes on

the Trust and kōhanga reo. Hearings were held in March and April 2012.

- Following the Supreme Court's decision in *Haronga v Waitangi Tribunal* [2011] NZSC 53, the Gisborne (Tūranga) district inquiry panel was reconstituted to hear an application for remedies in respect of the Māngatu Forest. The hearings will commence once the scope of the inquiry has been defined and any additional research completed.
- Urgency has been granted for a claim by Te Pūmautanga o Te Arawa Trust and Te Arawa River Iwi Trust concerning the terms of the Raukawa deed of settlement. The deed signing has been postponed and proceedings will resume if the parties fail to resolve their differences.
- In February 2012, the Port Nicholson Block Settlement Trust (representing Taranaki Whānui) was granted an urgent hearing. The trust claims that the Crown broke a promise not to offer Ngāti Toa other redress in the Wellington central business district in return for the trust's agreement that the Wellington Central Police Station could be offered to Ngāti Toa. This claim will be heard soon.
- In March 2012, the New Zealand Māori Council (and its co-claimants) was granted an urgent hearing of two claims. The first claim relates to the Crown's proposal to sell up to 49 per cent of shares in power-generating State-owned enterprises, without reserving any for the settlement of Māori Treaty claims. The second relates to Māori rights in water and geothermal resources more generally. Hearing dates will be set after the scope of the urgent inquiry has been defined.
- In April 2012, Ngāti Kahu of the Muriwhenua district were granted an urgent remedies hearing. They are seeking binding recommendations for the return of Crown forest and other former Crown lands, relying on the 1997 findings of the Muriwhenua Tribunal that their pre-1865 land claims were well-founded. Remedies for Ngāti Kahu will be considered only in respect of the area defined in its 2008 agreement in principle with the Crown.

These inquiries bring into focus three of the main purposes stated in applications for urgency: kaupapa issues concerning current Crown policies or practices; challenges to the negotiating mandate or terms of Treaty settlements; and requests for remedies where the Tribunal has previously adjudged the claims well-founded.

Historical claims

The 1 September 2008 deadline for the submission of new historical claims led to a flood of more than 1800 claims. The majority of these fell within districts under active inquiry, into which, when registered, they have been incorporated. A minority, however, join older claims in completed district inquiries that were too late to be heard and reported on.

Some of these claims have been included in the mandates of iwi and hapū negotiating Treaty settlements with the Crown, and in such cases the Tribunal has advised claimants to make contact with the Office of Treaty Settlements and negotiating teams. The Tribunal is exploring options for those claims which do not fall into an existing district inquiry process.

Kaupapa claims

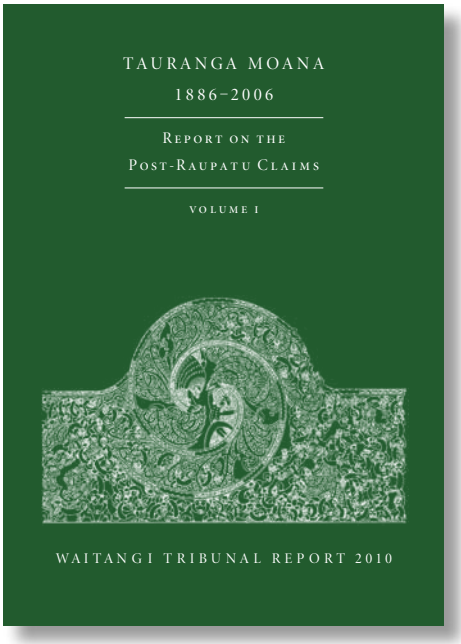
While the Tribunal has heard a wide range of kaupapa (generic or nationwide) issues under urgency, many remain to be heard. Kaupapa claims raise issues, both historical and contemporary, that affect either all Māori or particular groups of Māori on a regional or national scale. The Tribunal has begun to prepare a systematic approach to hearing kaupapa claims in their own right and expects to be ready to consult all relevant parties on options for a future kaupapa claims inquiry programme in future.

Balancing priorities

The conclusion of the district inquiry programme is now clearly in sight, although completing those inquiries currently in train will require much effort over some years ahead. Alongside these large inquiries, the Tribunal will provide an inquiry option for remaining historical claims, develop a new inquiry programme for hearing kaupapa or contemporary claims, and hear urgent claims and applications for remedies.

This increasingly diverse inquiry programme will require careful deployment of the Tribunal's human and financial resources. The Tribunal remains committed to completing inquiries into historical claims, contributing to the effort being devoted to negotiating Treaty settlements nationwide. At the same time, where claims meet the exacting threshold set, urgency will be granted for an early hearing. The Tribunal will also prepare to hear long-standing kaupapa claims. Innovation and new directions will become more prominent as the Tribunal's inquiry programme evolves to meet both familiar and new challenges. □

The Tauranga Moana Report



On 4 September 2010, at Hairini Marae on the shores of Tauranga Moana, the Tribunal presented to claimants *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*. This stage 2 report followed the Tribunal's report into the raupatu (confiscation) in Tauranga Moana (*Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims*), and with this ceremony the Tribunal completed the district inquiry into the historical claims of the iwi and hapū of Tauranga.

Judge Richard Kearney had presided over the inquiry into the raupatu claims of Ngāi Te Rangi, Ngāti Ranginui, Ngāti Pukenga, Waitaha, and Marutūahu. After Judge Kearney passed away in 2005, Judge Stephanie Milroy was appointed to preside over the stage 2 Tauranga Moana inquiry, which investigated more than 50 claims concerning events after 1885 (including those brought by three groups new to the inquiry, Ngāti Mahana, Ngāti Motai, and Ngāti Hinerangi). Judge Milroy was joined on the Tribunal panel by Professor Keith Sorrenson, John Clarke, and Areta Koopu.

The Tribunal's first set of key findings concerned the Crown's responsibility for land loss, and the inability of Tauranga Māori to develop their remnant lands. It found that the iwi and hapū of Tauranga now retain in Māori tenure only 13,000 hectares, less than one-quarter of the land they held in 1886. Most land loss occurred through Crown purchasing in the late nineteenth century, but public works, rating pressures, and the processes of urbanisation and subdivision nibbled away throughout the twentieth century at what little land remained. No group of Tauranga Māori was unaffected.

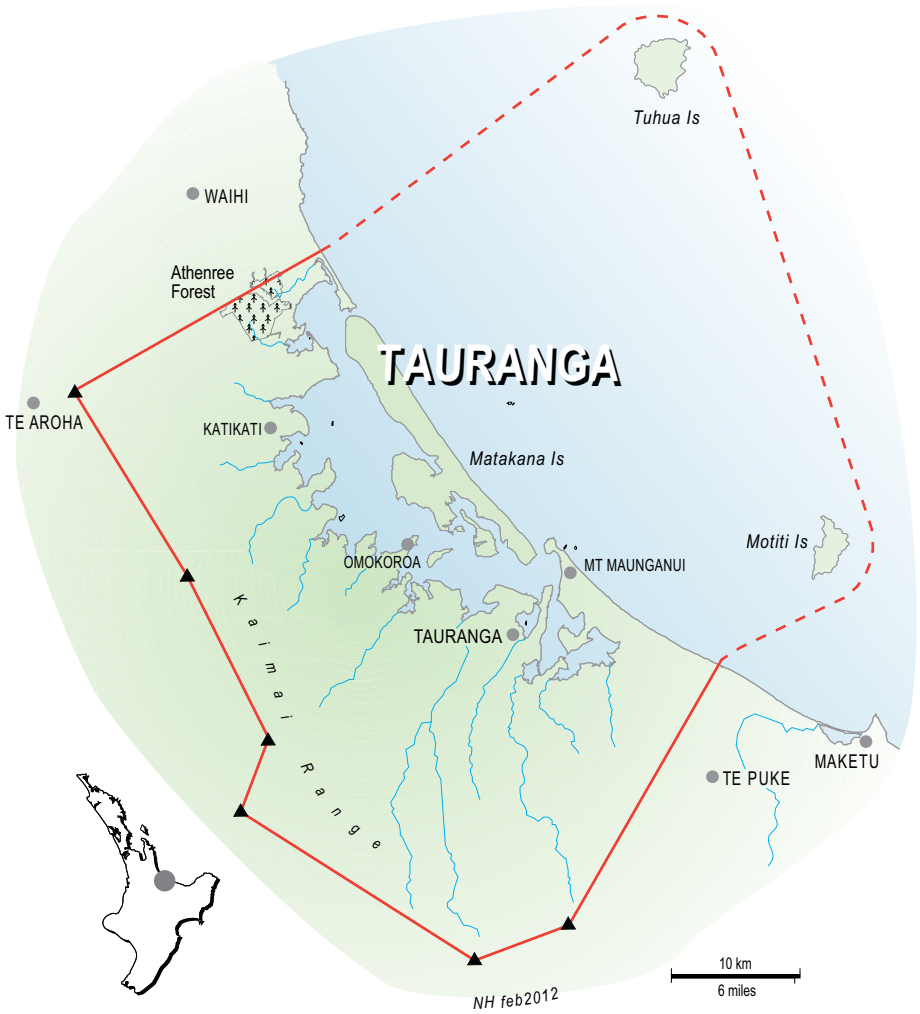
The Tribunal emphasised that Tauranga Māori could ill afford to lose any land at all, and that the scale of their loss has compounded the prejudice they had already suffered from the raupatu and its aftermath. It found that the Crown breached the principle of active protection by failing to ensure Tauranga Māori retain sufficient lands, most particularly by buying so much land for settlement rather than protecting Māori interests.

Tauranga Māori have faced considerable difficulties in trying to develop their remaining lands. The Tribunal found that the Crown must shoulder a large extent of the blame for these difficulties, because of the disadvantages created by the land tenure and administration system it imposed. The Tribunal noted the Crown's occasional efforts to assist Māori to overcome these disadvantages, but found that overall it failed to provide the level of protection and support promised under the Treaty.

The Tribunal's second key set of findings concerned the effect on Māori of Tauranga's rapid expansion from small town to major city. This expansion has largely been directed towards the eastern end of Tauranga Harbour, precisely where much of the remaining Māori land was situated, and has engulfed many marae and

Mangatawa, circa 1850s, showing pā terraces and a quarry

Alexander Turnbull Library, wa-36460



communities of Tauranga Māori. In examining how this development has affected Māori, the Tribunal paid particular attention to the Crown's public works programme, and the planning and valuation legislation implemented by local government. It also examined the adequacy of Māori representation in local government.

In the course of Tauranga's development, the Crown took Māori land for a number of major public works projects, which also destroyed wāhi tapu and adversely affected marae and ūrupa. Communities such as Whareroa are now surrounded by heavy industries, all based on public works takings of Māori land.

The Tribunal found that the Crown used powers of compulsory acquisition for public works inappropriately and, at times, unnecessarily. Planning and rating legislation and policy provisions have also worked against those Tauranga Māori who have wished to maintain a community lifestyle. Overall, the Tribunal found that the Crown's planning and valuation legislation has failed to incorporate Māori needs, perspectives, and aspirations. It specifically recommended the introduction of new valuation legislation that is more consistent with the Treaty. The Tribunal also found that Tauranga Māori still lack equitable levels of representation in local government, with the honourable exception of Environment Bay of Plenty, which has guaranteed Māori representation on its council.

Many claims addressed how explosive urban development has degraded and polluted the environment of Tauranga Moana, especially the waterways, thereby endangering the cultural heritage of Tauranga Māori. Many sites of cultural, spiritual, and historical importance have been modified or destroyed. Tāngata whenua have struggled to maintain even a faint shadow of the tino rangatiratanga and kaitiakitanga they once exercised over their environment and cultural heritage. The Tribunal recommended various ways by which the Crown can assist in restoring a measure of rangatiratanga to the iwi and hapū of the district.

Notwithstanding the intensive development in their rohe, Tauranga Māori remain significantly disadvantaged across a range of socioeconomic indicators. The Tribunal acknowledged that the Crown was not in control of all factors involved in this outcome. However, the Tribunal was particularly disappointed to find that the Crown had failed to protect or assist groups that were left landless, or nearly so. It also found that the Crown was too slow to address Māori needs for better access to health and housing.

The Tribunal recommended that the Crown address the claims of Tauranga iwi and hapū as a matter of high priority. It urged that substantial redress be made for post-1886 breaches, separately and in addition to redress for the raupatu. The Tribunal stressed that redress needs to include the return of land wherever possible, particularly within the Tauranga city boundary. □

The Strand, Tauranga, during the 1880s

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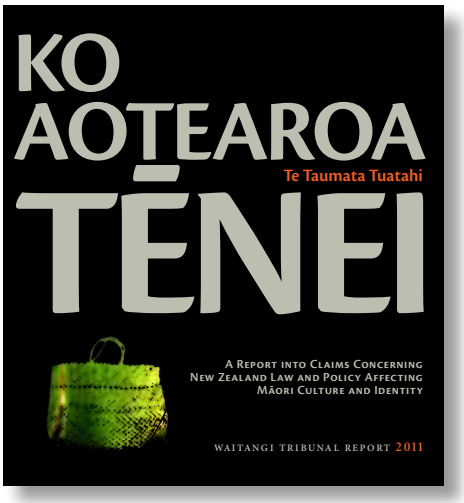
Ko Aotearoa Tēnei: Wai 262 Claim Results in Landmark Report



The tribunal's Wai 262 report was released on 2 July 2011, nearly 20 years after the claim was originally lodged in October 1991. Wai 262 is known generally as the 'flora and fauna' or 'intellectual property' claim, but neither description adequately conveys the breadth and depth of its significance. In reflecting on this, the Tribunal decided to call its report *Ko Aotearoa Tēnei: A Report into New Zealand Law and Policy Affecting Māori Culture and Identity*.

The landmark report was presented to claimants at Roma Marae in Ahipara, in recognition of Kaitaia being the home of the last remaining original named claimant, Ngāti Kurī kuia Haana Murray. The claim itself was brought on behalf of six iwi: Ngāti Kurī, Te Rarawa, Ngāti Wai, Ngāti Porou, Ngāti Kahungunu, and Ngāti Koata.

The claim originally commenced hearings in 1997 under presiding officer Judge Richard Kearney. In the following years, claimant evidence covered practically every area of government law and policy relating to indigenous flora and fauna, intellectual property, research science, and cultural heritage, from 1840 to the present. The scope of the inquiry was later refined by the Tribunal in a statement of issues, including a restriction (with certain exceptions) to contemporary (post-1975) matters.

After Judge Kearney's death following a long illness in 2005, the Tribunal was reconvened under then Chief Judge Joe Williams to hear the remaining evidence and submissions in 2006 and 2007. Other members of the panel were Roger Maaka, Pam Ringwood, and Keita Walker. Two Tribunal members who had assisted the panel as kaumātua also died before the report's completion: Bishop Manuhuia Bennett in 2001 and Rangitihi Tahuparae in 2008.

The claim essentially boiled down to the issue of who controls mātauranga Māori, or Māori traditional knowledge and culture. For example, the claimants argued that kaitiaki or guardian communities often no longer control their cultural expressions, their knowledge of traditional medicine, the well-being of tribal dialects, and the management of species that have shaped Māori identity. Consequently, there was scarcely a government agency not affected by these concerns and the work of some 20 agencies is evaluated in the report. Wai 262 was therefore the Tribunal's first whole-of-government inquiry.

Ko Aotearoa Tēnei is presented in two levels. The first level, which the Tribunal called *Te Taumata Tuatahi*, is an accessible volume designed for a general readership. The second level, the two-volume *Te Taumata Tuarua*, is a more detailed treatment of the same issues. The reason for this two-layer approach is that the Tribunal wished as many New Zealanders as possible to read its report, while at the same time ensuring that a fully referenced and detailed account was made to back up its recommendations. Both levels are available in hard copy and on the Tribunal's website.

The report is split into eight thematic chapters. Chapter 1 considers the Māori interest in the works created by weavers, carvers, writers, musicians, artists, and others in the context of New Zealand's intellectual property law, particularly copyright and trade marks. Chapter 2 examines the genetic and biological resources of the flora and fauna with which Māori have developed intimate and long-standing relationships, and which are now of intense interest to scientists and researchers involved in bioprospecting, genetic modification, and intellectual property law, particularly patents and plant variety rights.

The next two chapters consider Māori interests in the environment more broadly, first in terms of the wide-ranging aspects of the environment controlled by the Resource Management Act (chapter 3), and then with regard to the conservation estate managed by the Department of Conservation (chapter 4).

Chapter 5 focuses on the Crown's protection of te reo Māori (the Māori language) and its dialects, and considers in depth the current health of the language. A pre-publication version of this chapter was released in October 2010. Chapter 6 considers those agencies where the Crown owns, funds, or oversees mātauranga Māori and is thus effectively in the seat of kaitiaki. These agencies operate in the areas of protected objects, museums, arts funding, broadcasting, archives, libraries, education, and science.

Chapter 7 examines the Crown's support for rongoā Māori or traditional Māori healing. It also traverses the principal historical issue addressed by the Tribunal in the inquiry, the passage and impact of the Tohunga Suppression Act 1907. Chapter 8 addresses the Crown's policies on including Māori in the development of New Zealand's position concerning international instruments such as the Convention on Biological Diversity and the Declaration on the Rights of Indigenous Peoples.

The Tribunal's overall conclusion is that the Treaty envisages the Crown–Māori relationship as a partnership, in which the Crown is entitled to govern but Māori retain tino rangatiratanga over their taonga. This partnership framework provides the way forward for the Crown–Māori relationship. However, in many respects, current laws and Government policies fall short of partnership, instead marginalising Māori and allowing others to control key aspects of Māori culture. This leads to a justified sense of grievance, and also limits the contribution Māori can make to national identity and to New Zealand's economy.

Claimant Haana Murray at the report handover

Tribunal staff member Charles Dawson with claimant Haana Murray at the report handover at Roma Marae, Ahipara, 2 July 2011

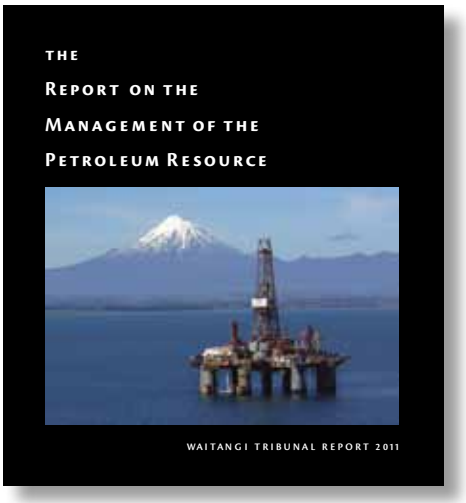
The Tribunal argues that it would be opportune to rectify this state of affairs. It suggests that New Zealand is beginning a transition to a new and unique national identity, but for this transition to succeed, 'the Crown–Māori relationship, still currently fixed on Māori grievances, must shift to a less negative and more future-focused relationship at all levels.' The relationship must change 'from the familiar late-twentieth century partnership built on the notion that the perpetrator's successor must pay the victim's successor for the original colonial sin, into a twenty-first century relationship of mutual advantage in which, through joint and agreed action, both sides end up better off than they were before they started. This is the Treaty of Waitangi beyond grievance.'

The Tribunal recommends a raft of changes to reform laws, policies, or practices relating to health, education, science, intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, and the involvement of Māori in the development of New Zealand's positions on international instruments affecting indigenous rights. These recommendations include law changes and the establishment of new partnership bodies in several of these areas.

As the Tribunal puts it, these changes 'will not only fulfil – at last – the promise that was made when the Crown and tāngata whenua entered their partnership at Waitangi. It will also pave the way for a new approach to the Treaty relationship: as a relationship of equals, each looking not to the grievances of the past but with optimism to a shared future. It is, in other words, time to perfect the partnership.'

The publication of *Ko Aotearoa Tēnei* marks the end of the Tribunal careers of (now) Justice Joe Williams, Roger Maaka, and Pam Ringwood. Many Tribunal staff assisted the panel in its work over the years and are acknowledged in the report. □

The Report on the Management of the Petroleum Resource



The second Waitangi Tribunal report on petroleum claims was released as a pre-publication volume in December 2010 and published in April 2011. It resulted from an urgent inquiry held in 2010 to investigate how the exploration for and mining of the resource is managed in modern times. The Tribunal's previous findings on petroleum related to the ownership of the resource and were presented in the *Petroleum Report* of 2003.

The claims discussed in the latest report were brought against the Crown by Ngāruahine of Taranaki – an area already extensively affected by petroleum prospecting, exploration, and production – and Ngāti Kahungunu of Hawke's Bay and Wairārapa, where exploratory drilling has also been carried out.

The current regime for managing petroleum is governed by the Crown Minerals Act 1991 and the Resource Management Act 1991. In essence, the claimants saw three main problems with the regime. They said that the substance of the legislation was biased against Māori interests in the environment and in their culture, and favoured the interests of others. They also claimed that the processes established to apply the legislation failed to ensure effective participation by Māori; indeed the processes in question could even deter or deny Māori involvement, meaning that Māori struggled to safeguard their interests. Lastly, said the claimants, a further obstacle was created by the lack of reliable and sufficient assistance for Māori communities to participate in resource management processes. Consequently, the regime breached the principles of the Treaty of Waitangi.

The Crown, during the Tribunal's inquiry, accepted that Māori capacity to participate in resource management processes is an issue, but said that 'incremental steps' were being taken to improve the situation. Other than that, the Crown denied the claims.

Having examined the evidence, the Tribunal, consisting of Judge Layne Harvey (presiding), Basil Morison, Joanne Morris, and Professor Pou Temara, said that it was 'disturbed by the extent to which the current regime depends for its protection of Māori interests on the ad hoc involvement of Māori individuals and groups who are ill-resourced to bear the burdens involved'. The Tribunal was particularly concerned about the effects of the regime on sites of historical and cultural significance in Taranaki, given the already devastating effects of land confiscation there in the nineteenth century. It noted that many of the sites not only were significant to Māori but also had a bearing on the history and identity of New Zealand as a whole.

For the petroleum management regime to be consistent with the principles of the Treaty, the Tribunal found that four criteria needed to be met. Tāngata whenua had to be able to:

- count on being involved at key points in decision-making processes that affected their interests;
- make a well-informed contribution to decisions;
- afford to have that level of involvement; and
- be confident that their contribution would be understood and valued.

The Tribunal found that, overall, this was not happening. In part, this was because the rūnanga or iwi authorities envisaged under the Runanga Iwi Act 1990, and intended to act as a kind of Māori counterpart to local government bodies, were disestablished when that Act was repealed less than a year later. Another problem was the complexity of the petroleum management regime, with the allocation of exploration and mining rights being conducted quite separately from the management of the effects of those activities, and the number of local government processes in which Māori must simultaneously engage if they wish to try to protect their interests.

To help address the situation, the Tribunal made 11 recommendations, covering matters such as:

- the establishment of a ministerial advisory committee to provide advice directly to the Minister of Energy on Māori perspectives and concerns about government policy for petroleum exploration and mining;
- the greater use by the Crown of its powers to direct and guide local authorities' approach to exploration and mining activities,

particularly as to the sorts of conditions that can be placed on the conduct of such activities in order to protect Māori interests;

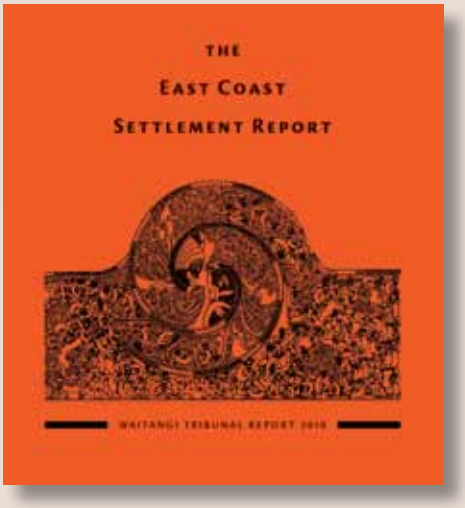
- the re-establishment of district and regional representative bodies for tāngata whenua, to, among other things, consider petroleum management issues, with such bodies to be adequately resourced by central government and empowered with some decision-making responsibilities by local government;
- the use of a small percentage of the Crown's petroleum royalties to establish a fund to which iwi and hapū could apply for assistance to help them participate more effectively in petroleum management processes;
- the greater use of joint resource consent hearings by local authorities on matters relating to petroleum management; and
- the reform of the Crown Minerals Act 1991, to, among other things, strengthen its Treaty provisions, allowing the owners of Māori land to refuse permission for exploration and mining activities on their land and enhancing the provisions for the protection of sites of particular importance to iwi.

The Tribunal noted that its findings on the petroleum management regime had implications for the resource management regime more generally, and it hoped that its recommendations might also be of assistance to the Crown in that context. □

The East Coast Settlement Report

The *East Coast Settlement Report* resulted from an urgent Tribunal hearing held in Wellington between 14 and 16 December 2009. The Tribunal panel comprised Judge Craig Coxhead (presiding), the Honourable Sir Douglas Kidd, Kihi Ngatai, Tania Simpson, and Basil Morrison.

The central issue was the Crown's recognition of the mandate held by Te Rūnanga o Ngāti Porou (TRONP) to negotiate and settle all historical Ngāti Porou Treaty of Waitangi claims. The three main claimants in the inquiry asserted they represented Ruawaipu, Uepohatu, and Te Aitanga-a-Hauiti. All submitted that they, and those they claimed to represent, were not Ngāti Porou, and therefore TRONP had no valid mandate to represent them in settlement negotiations. At stake was the fact that, once their claims were settled, they could no longer be inquired into by the Tribunal. The claimants argued that the Crown's mandating process was flawed and sought a recommendation that the Crown delay the Ngāti Porou settlement negotiations to enable their historical claims to be inquired into by the Tribunal.



TRONP argued that those identifying as Ruawaipu, Uepohatu, and Te Aitanga-a-Hauiti were Ngāti Porou. The Crown submitted that TRONP had a valid mandate to negotiate all Ngāti Porou historical claims within the East Coast inquiry district. The Tribunal did not inquire into matters of tribal identity but instead focused on the actions of the Crown in recognising TRONP's mandate.

The Tribunal did not recommend that the Crown delay settlement with TRONP, as requested by the claimants. It concluded that the potential prejudice of delaying such a significant settlement would outweigh any possible prejudice to the claimants from having their claims settled without their specific consent. Furthermore, the Tribunal was not convinced that the claimants commanded significant support compared with the support demonstrated by TRONP.

However, the Tribunal also noted flaws in the process followed by the Crown in recognising TRONP's mandate. It therefore recommended a number of changes to the Crown's mandate policies to enhance the durability of future settlements. In January 2011, in the High Court, the claimants successfully challenged the Tribunal's right to make recommendations. The court concluded that the Tribunal could only make recommendations if it found that a claim was well founded. As it had not done so in the case of the East Coast settlement inquiry, the Tribunal should not have made recommendations, the Court said. The court did not support any of the claimants' other objections to the *East Coast Settlement Report* and did not order any changes to the report. □

The Wairarapa ki Tararua Report

On 26 June 2010, at Te Ore Ore Marae near Masterton, the Waitangi Tribunal released its report on the Treaty claims of iwi and hapū of the Wairarapa ki Tararua district to around 300 assembled claimants. The principal iwi and hapū in the inquiry district, which extends up the eastern side of the North Island from Cape Palliser to southern Hawke's Bay, are Ngāti Kahungunu and Rangitāne, including Te Hika-ō-Pāpāuma, Ngāi Tūmapuhia-ā-Rangi, and Ngāti Hinewaka.

The panel appointed to hear the claims comprised Judge Carrie Wainwright (presiding), Dame Margaret Bazley, Professor Wharehuia Milroy, and Dr Ranginui Walker, assisted by Tribunal member Dr Robyn Anderson as consulting historian. Nine weeks of hearings for the 28 claims and accompanying evidence began in March 2004 and concluded in March 2005.

The panel produced a three-volume report covering three themes: 'the people and the land', 'the struggle for control', and 'powerlessness and displacement'. Volume 1 explores the transition from the time when Māori exercised authority over their whole environment through to the tumultuous era of Crown purchasing. In little more than a decade, from 1853 to 1865, the Crown purchased about 1.5 million acres of Māori land, with relatively little reserved for Māori to use or develop. The Tribunal found that the Crown put an end to leases between Māori and settlers, by which Māori had looked likely to prosper. The Crown then purchased too much Māori land too quickly and without regard to the inevitable plight of a Māori population left virtually landless in a part of the country where agricultural enterprise was the principal route to a good livelihood. This was in breach of the Crown's Treaty duties, as was its purchase of land without the free, willing, and informed consent of its owners.

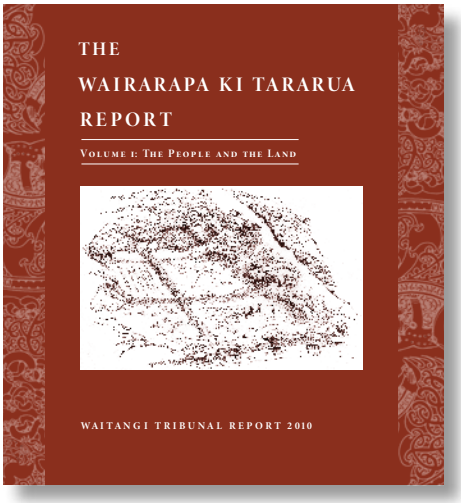
Volume 2 coveres the Native Land Court era right through to the end of the twentieth century, including public works issues, to describe how authority over even more land and resources moved out of Māori hands, again through processes outside of iwi and hapū control. The Crown's failure to intervene in a timely manner to prevent the ongoing diminution of Māori land, and its own purchase of most of the Seventy Mile Bush reserves, breached its Treaty obligation of active protection.

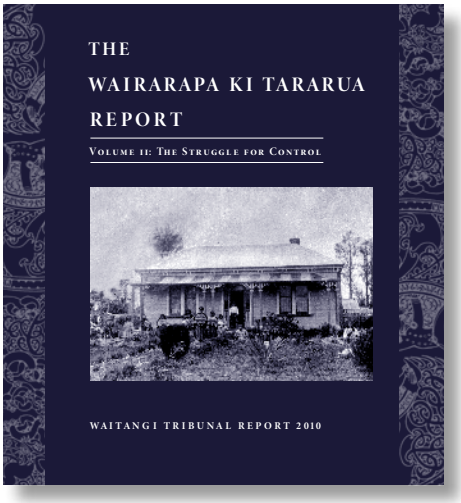
The Tribunal also considered evidence on the operation and role of the Kotahitanga Pāremata (or Parliament) particularly at its Pāpāwai base (near Greytown) in the 1890s. This was a self-funded elected national Māori body with considerable popular support – set up by Māori as an alternative mechanism to the Native Land Court to make laws and regulations for their own land and resources. The Tribunal considered that the Crown missed a crucial opportunity to effect a Treaty partnership and institutionalise Māori autonomy centrally and locally, especially since the moderate wing of the Kotahitanga, with which the Seddon Government carefully cultivated a relationship, was not seeking to usurp the role of the New Zealand Parliament. The Tribunal found that the Crown's failure to incorporate the Kotahitanga into the machinery of the State, and share power with Māori in a meaningful way at the central level, was a serious breach of the principles of the Treaty.

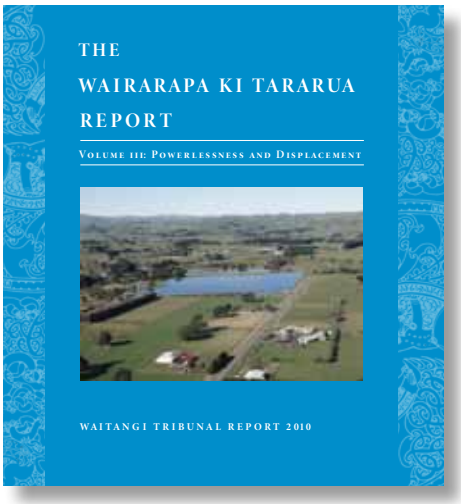
Also of particular significance was the fate of Wairarapa Moana (Lakes Wairarapa and Ōnoke), the best tuna (eel) fishery in the lower North Island. How the interests of tangata whenua there were substituted for land at Pouākani, hundreds of miles distant and in another iwi's rohe, is one of the signal stories of the colonisation of New Zealand. The Tribunal urged that Māori rights in and around Wairarapa Moana be recognised and given effect. In its view, the important and little-known history of Wairarapa Moana and Pouākani is a story in which all the credit for honour, reasonableness, and restraint goes to the Māori actors, and little to either the representatives of the settler government of that time or indeed to the Wairarapa farmers who so resented Māori controlling the opening of the wetland to the sea.

The Tribunal noted that it had not observed any Government response to its recommendations, first released in July 2009, for changes to the public works regime so as to remove the legislative power to acquire Māori land compulsorily for public works in all but the most extreme situations. It expressed the hope that this area of policy will soon get the attention it has so long been denied. The Tribunal made one specific recommendation that, having properly given back the Ōkautete School site to the local Māori community, the Crown should also give them the school buildings and schoolhouse located on the site.

Volume 3 addresses the many environmental, local government, heritage, fishing, and foreshore and seabed issues of concern to tangata whenua. The Tribunal considered there was not enough muscle in the legislation governing the relationship between tāngata whenua and local authorities, the Department of Conservation, agencies involved in Māori heritage management, and the Ministry of Fisheries, to enable Māori in the district to make their views count to an extent that was at all appropriate in Treaty terms. As a result, it was







difficult for the district's Māori population to exercise any meaningful influence over what went on in its own locality. Recommendations included adding more compelling Treaty provisions to the Local Government and Resource Management Acts, with regular audits and sanctions for non-compliance. A particular recommendation concerned joint management and ownership between the Crown and Rangitāne of the Pūkaha Mount Bruce reserve north of Masterton.

The Tribunal was also concerned that many important Māori heritage sites in the region were vulnerable. Some archaeological sites, especially in the south, were internationally significant, and the Tribunal considered that the regime for their recognition and protection was inadequate. It recommended changes to provisions in the Resource Management and Historic Places Acts to cover Māori involvement in decision-making about their heritage sites and taonga.

The Tribunal found that the legislative provisions covering the exercise of customary fishing rights lacked clarity, were difficult to put into effect, and were often viewed by Māori as 'toothless'. It saw fundamental difficulties in reconciling Māori customary rights with those of commercial fishers but acknowledged that current Ministry of Fisheries-led initiatives to improve the customary fisheries regime were still very much a work in progress and recommended that the Crown review these new initiatives in five years' time to ascertain their efficacy. If the review shows no significant improvement or is not undertaken, claimants have leave to ask for further Tribunal inquiry into their claims in his area. The Tribunal also recommended an immediate legislative change to make it clear that taiāpure do not need to be small, discrete areas but may be of significant size when appropriate.

The Tribunal noted that Te-Hika-ō-Pāpāuma and Ngāti Hinewaka disclosed a very significant interest in the foreshore and seabed, adding that it doubted that any tribal group would be able to adduce better evidence of sustained and unbroken customary connection with a piece of coastline than Te-Hika-ō-Pāpāuma's over the coastline adjoining Ōwahanga Station. The Tribunal did not make specific findings or recommendations as at the time of writing the Government was yet to respond to the 2009 ministerial panel report recommending a review of the Foreshore and Seabed Act 2004. However, it did grant the claimants leave to seek further inquriy into the foreshore and seabed situation if the Government elected not to change the 2004 Act or if any legislative change increased the prejudice to claimants.

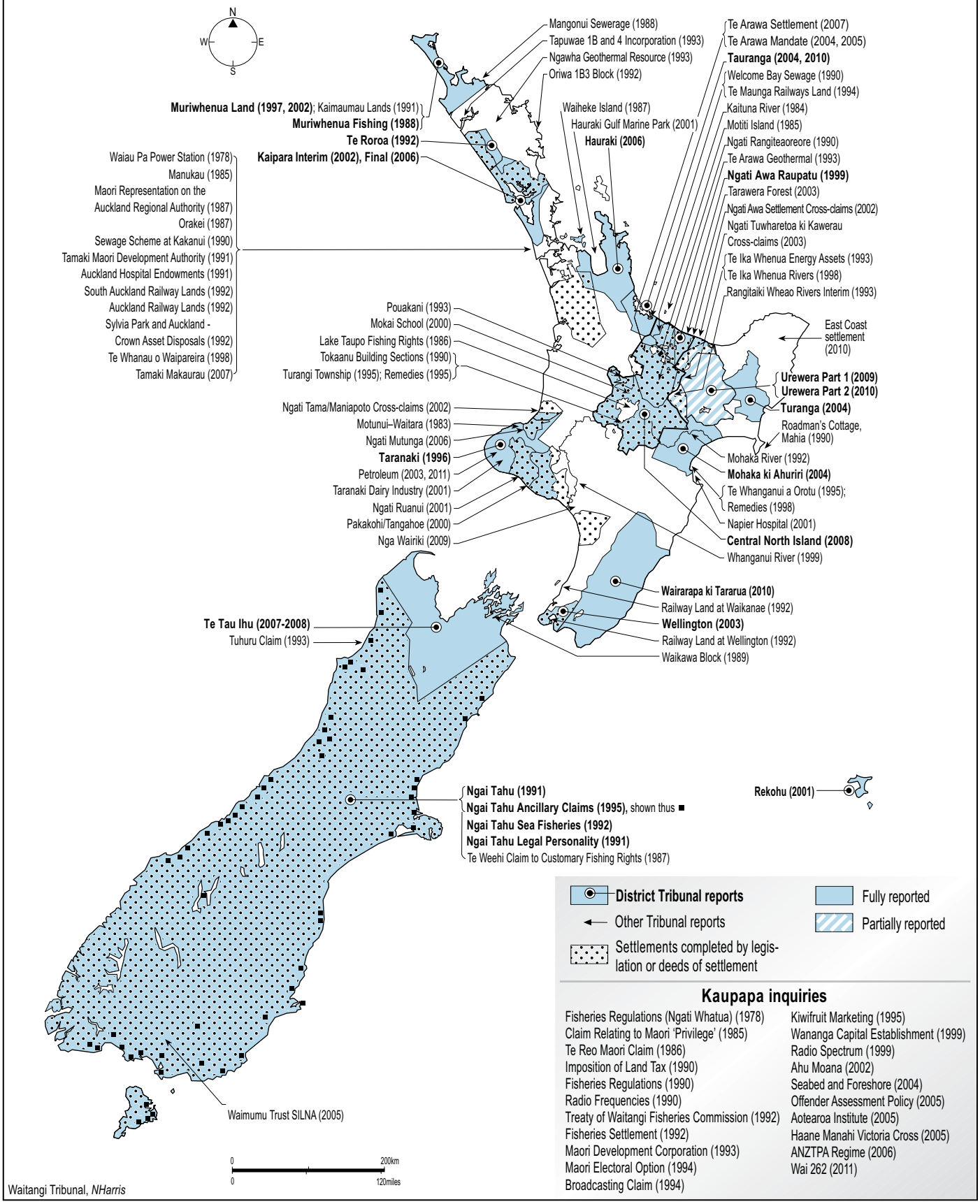
The Tribunal's final recommendations concerned the issue of official recognition of Rangitāne identity. It recommended that the Crown ensure that all future publications produced by Government departments refer to both Rangitāne and Ngāti Kahungunu as tangata whenua of Wairarapa; that the Crown consider writing to the chief executives of local and regional authorities to confirm its recognition of Rangitāne as tangata whenua of Wairarapa ki Tararua and to encourage local government to further develop working relationships with the Rangitāne tribal organisation; and that the Crown take steps to bring about three place name changes in Rangitāne's rohe – Tararua to Tāmaki-nui-ā-Rua, Tākitimu (Māori Land Court district) to Ikaroa, and Rimutaka to Remutaka.

The Tribunal was concerned that te reo Māori had reached a very low ebb in the district. Māori language tuition was not easily accessible to most and was not even available to all Māori children, especially after early childhood. Improved access and more resources were necessary if the Crown were to make amends for the wrongs of the past.

Overall, the Tribunal recorded its strong impression of an improvement in the historically difficult relationship between the region's two tribes, Ngāti Kahungunu and Rangitāne, during the course of the inquiry. It expressed the hope that this would set the scene for a successful negotiated resolution of the Treaty breaches documented in its report. □

WT TRIBUNAL REPORTS

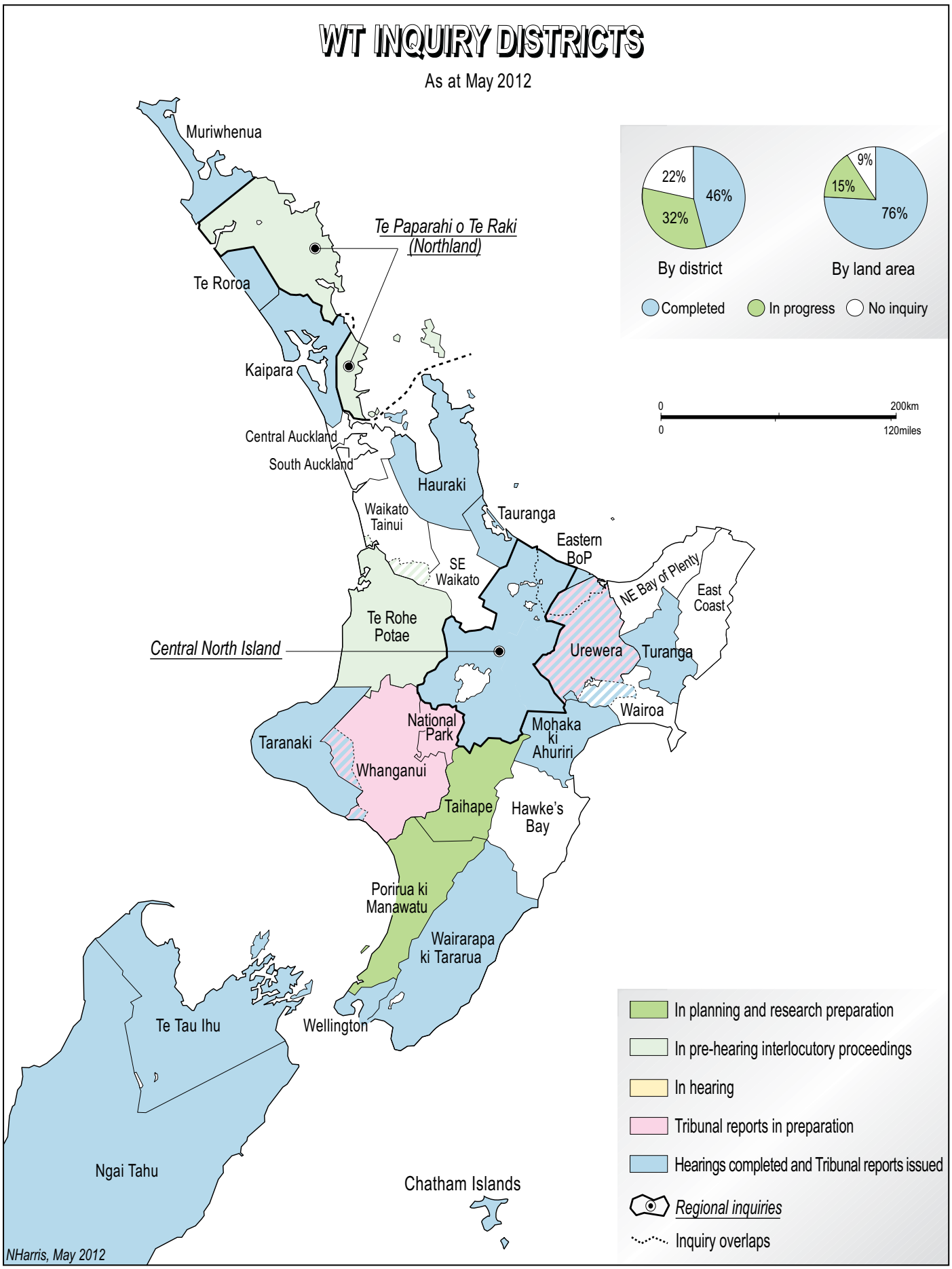
As at May 2012



Kaupapa inquiries

Fisheries Regulations (Ngati Whatua) (1978)
Claim Relating to Maori 'Privilege' (1985)
Te Reo Maori Claim (1986)
Imposition of Land Tax (1990)
Fisheries Regulations (1990)
Radio Frequencies (1990)
Treaty of Waitangi Fisheries Commission (1992)
Fisheries Settlement (1992)
Maori Development Corporation (1993)
Maori Electoral Option (1994)
Broadcasting Claim (1994)
Kiwifruit Marketing (1995)
Wananga Capital Establishment (1999)
Radio Spectrum (1999)
Ahu Moana (2002)
Seabed and Foreshore (2004)
Offender Assessment Policy (2005)
Aotearoa Institute (2005)
Haane Manahi Victoria Cross (2005)
ANZTPA Regime (2006)
Wai 262 (2011)

Waitangi Tribunal, *NHarris*


WT INQUIRY DISTRICTS
As at May 2012
Muriwhenua
Te Paparahi o Te Raki (Northland)
Te Roroa
Kaipara
Central Auckland
South Auckland
Hauraki
Waikato Tainui
Tauranga
Eastern BoP
SE Waikato
NE Bay of Plenty
East Coast
Te Rohe Potae
Central North Island
Urewera
Turanga
Wairoa
National Park
Mohaka ki Ahuriri
Taranaki
Whanganui
Taihape
Hawke's Bay
Porirua ki Manawatu
Wairarapa ki Tararua
Wellington
Te Tau Ihu
Ngai Tahu
Chatham Islands
22%
46%
32%
By district
9%
15%
76%
By land area
Completed
In progress
No inquiry
0
200km
0
120miles
In planning and research preparation
In pre-hearing interlocutory proceedings
In hearing
Tribunal reports in preparation
Hearings completed and Tribunal reports issued
Regional inquiries
Inquiry overlaps
NHarris, May 2012

Taihape

Adam Heinz

The Gunfighter Pā site on the Napier to Taihape Road, looking north-west towards the Kaimanawa, Ahimanawa, and Kaweka Ranges

The Taihape district inquiry is in the early stages of preparing for hearings. Inquiry boundaries and a single-stage comprehensive inquiry process have been confirmed, research topics approved, and researchers engaged by the Crown Forestry Rental Trust on behalf of the claimants. Chief Judge Wilson Isaac is the presiding officer, and Professor Pou Temara was appointed to the panel in August 2010.

The area in general is also known as inland Pātea or Mōkai Pātea. The inquiry district lies west of the Ruahine and Kaweka Ranges and south of the Kaimanawa mountains. Hunterville, Taihape, and Waiōuru are the main towns in the area. The upper Rangitīkei River is a central waterway, with the Hautapu, Moawhango, and Kawhatau its principal tributary rivers within the inquiry district.

More than 30 claims concerning Crown actions in the area are being inquired into, including claims 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. Also included are claims on behalf of Ngāi Te Upokoiri and Ngāti Hinemanu, Ngāti Apa, Ngāti Rangi, Ngāti Tūwharetoa, Ngāti Waewae, and Ngāti Pikiahu.

The inquiry started in early 2010, following consultation in 2009 on whether there should be a unified Taihape ki Kapiti inquiry region or separate inquiry districts. A judicial conference in May 2010 resolved the inquiry boundaries, with the eastern boundary in the Ruahine Ranges being aligned with those of the original Māori land blocks rather than with current local government boundaries.

A second judicial conference, held in November 2010, discussed recommended research, a comprehensive inquiry process, and other related matters. In June 2011, a third judicial conference confirmed arrangements for researching agreed topics. The inquiry is now entering its research phase. □

Te Paparahi o te Raki

Samuel Carpenter

View over Hokianga Harbour

The te paparahi o te raki (Northland) district inquiry is one of the largest Waitangi Tribunal inquiries, both in claim numbers (around 370) and in the size of the claimant communities involved. The panel is Judge Craig Coxhead (presiding), Dr Richard Hill, Joanne Morris, Kihi Ngatai, Keita Walker, and Dr Ranginui Walker, and the inquiry includes land stretching south from the ridge of the Maungataniwha Range to the North Shore of Auckland. The claims were brought largely by Ngāpuhi, Ngāti Whātua, Ngāti Wai, Ngāti Hine, Patuharakeke, Ngāti Rehua, and Ngāti Manuhiri claimants.

The Paparahi o te Raki inquiry has been split into two stages. The stage 1 inquiry hearings were completed in February 2011, and the stage 1 report, currently being written, will respond to the issues posed by the Tribunal before the commencement of the hearings. Those issues – uniquely in Tribunal inquiries – focused on Maori and Crown understandings of He Whakaputanga o te Rangatiratanga (the Declaration of Independence 1835) and Te Tiriti o Waitangi (the Treaty of Waitangi 1840).

The stage 2 inquiry will focus on post-1840 issues, which may include old land claims, the Northern War of 1844–46, the Native Land Court and Māori land alienation, the rūnanga system and the Crown's relationship with the Kotahitanga movement, and Māori land management.

The shape of the stage 2 inquiry was discussed at a judicial conference in May 2011. Claimants and counsel clearly supported beginning with an initial round of more generic regional hearings. The Tribunal consequently proposed a stage 2 timetable with hearings separated into two distinct phases: hearings on generic issues at a regional level, followed by hearings on localised issues at a sub-regional level. The judge also laid out the timetable of key dates in preparation for these hearings.

As part of the preparation required for the stage 2 hearings, the Tribunal has received many claim amendments incorporating generic issues and particular examples that have come out of the Te Raki research casebook. A research programme undertaken by the Crown Forestry Rental Trust has already produced most of the research for stage 2 and the Tribunal is currently commissioning research to fill any major gaps.

One of the most important tasks when preparing for hearings is for the Crown, the claimants, the counsel, and the Tribunal to develop a set of issues that will guide the presentations at the hearings. The articulation of these issues will be the next step for all involved in Te Raki stage 2 and was the focus of a judicial conference held in November 2011. □

National Park

The national park inquiry encompasses 41 claims brought by Ngāti Tūwharetoa, Ngāti Hikairo, Ngāti Rangi, Ngāti Hāua, and others. The majority of the claim issues relate to war and political engagement in the nineteenth century; the operations of the Native Land Court in the district; land purchasing practices and the taking of land for public works; the establishment and ongoing management of the Tongariro power development scheme; and the creation and management of the Tongariro National Park.

The Tribunal panel, consisting of Chief Judge Wilson Isaac (presiding), the Honurable Sir Doug Kidd, Professor Sir Hirini Moko Mead, and Dr Monty Soutar, held 10 weeks of hearings between February 2006 and July 2007. The inquiry is now in the report-writing phase, and the work is well advanced. The report is due for release in late 2012. □

Whanganui Lands

The whanganui lands inquiry encompasses over 80 claims covering an area stretching from the mouth of the Whanganui River to just north of Taumarunui. It also takes in lands around the Whangaehu River and Waiōuru in the east and the Waitōtara River catchment area in the west.

The panel comprises Judge Carrie Wainwright (presiding), Dr Angela Ballara, Professor Wharehuia Milroy, and Dr Ranginui Walker, and hearings were held in the district from 2007 to the end of 2009. The inquiry moved into report-writing in early 2010.

Following discussions with claimant groups, it was decided that the report would cover certain key topics only, including Whanganui iwi and hapū; political engagement with the Crown; the Native Land Court; Crown purchasing; Māori land administration and development; the Waimarino land block; the Whanganui National Park; socio-economic issues, and local issues. The report is due to be completed in 2013. □

Porirua ki Manawatū

In 2008, the Tribunal received a number of requests to inquire into Treaty claims in the Taihape, Rangitīkei, Manawatū, Horowhenua, and Kāpiti areas. The claimants were from the iwi of Ngāti Raukawa, Ngāti Kauwhata, Muaūpoko, and Te Atiawa/Ngāti Awa. Some claims in the region were already in the process of being settled, with Rangitāne ki Manawatū and Ngāti Toa Rangatira in negotiations with the Crown.

The panel for the inquiry includes Deputy Chief Judge Caren Fox (presiding), Emeritus Professor Sir Tamati Reedy, and Dr Grant Phillipson.

The Tribunal has so far held two judicial conferences in the inquiry district (in December 2010 and July 2011). These provided opportunities for the claimant groups to meet the Tribunal and to make presentations outlining their preferences for inquiry type and research. □

Te Rohe Pōtae

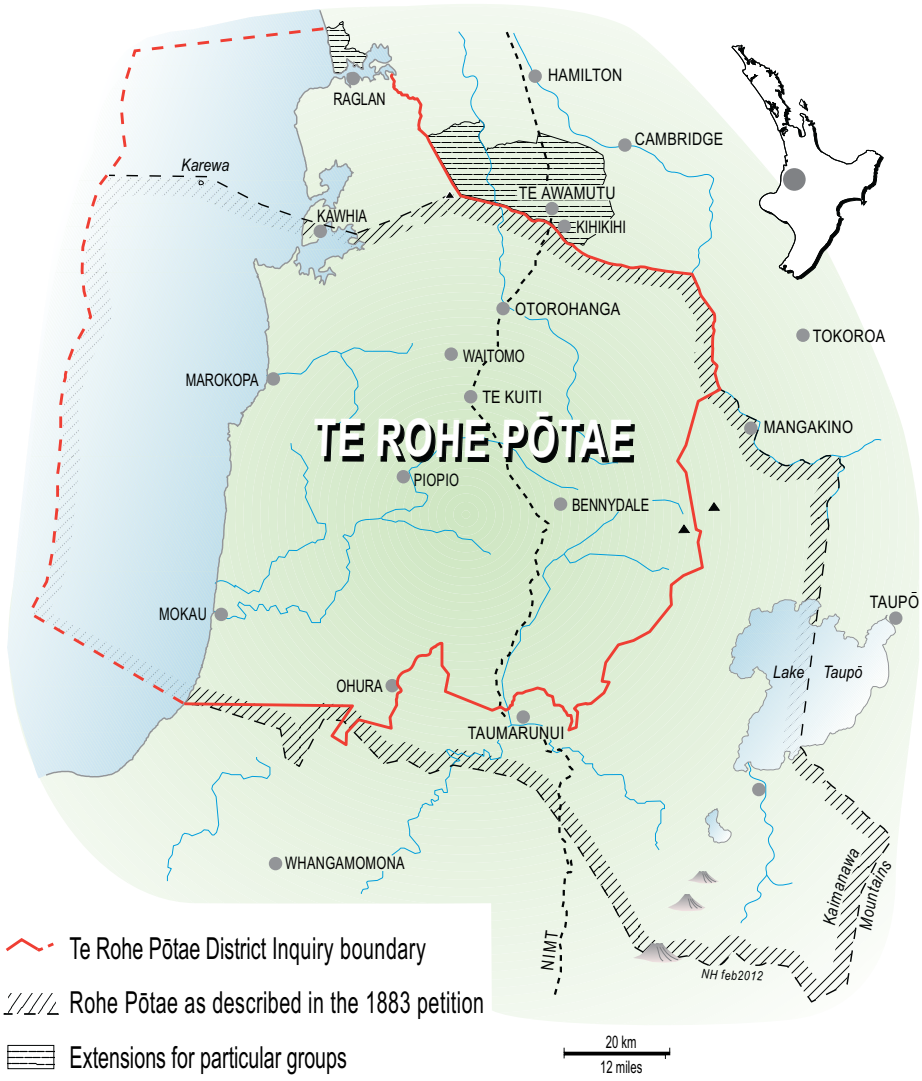
The rohe pōtae (King Country) district inquiry, presided over by Judge David Ambler, encompasses over 250 claims from Ngāti Maniapoto, Ngāti Hikairo, Tainui Awhiro, Ngāti Raukawa, and other iwi and hapū. As well as Judge Ambler, the panel consists of Professor Sir Hirini Moko Mead, John Baird, and Dr Aroha Harris.

The inquiry district ranges from Whaingaroa Harbour in the north, down to the area north of Taumarunui, and as far east as the Maraeroa and Wharepuhunga blocks. Te Kuiti and Ōtorohanga are towns central to the area. The Rohe Pōtae district is home to significant sites such as the caves at Waitomo and Pirongia Maunga. The Waipā River is one of several important waterways in the area. Kāwhia, too, is of special significance as the resting place of the *Tainui* waka.

The bulk of the inquiry research is complete, and the research casebook officially closed on 31 August 2011. The panel is now reviewing it to determine whether there is sufficient evidence on claim issues for hearings to commence. This review will be distributed to inquiry parties upon its completion.

Participants in the inquiry are currently identifying and refining the issues to be focused upon at hearings. The Tribunal's 'statement of issues', which details the key issues in contention between the claimants and the Crown, is due in May 2012, with hearings set to begin in September 2012. (For more detail regarding the inquiry's forward programme, see under 'Inquiries' on the Tribunal's website.)

During the research stage of the inquiry, the Tribunal implemented an innovative approach to hearing oral traditions: 'Ngā Kōrero Tuku Iho', a series of hui at which the tāngata whenua of the district presented oral traditional evidence to the panel.



In mid-2009, Judge Ambler had released a discussion paper regarding the presentation of oral traditions. It canvassed whether the Tribunal process could accommodate oral traditional evidence in a more appropriate manner and within an earlier timeframe than had been the case in previous Tribunal inquiries. Judge Ambler sought a more dynamic forum, sympathetic to the tikanga of oral traditions.

Following kōrero at judicial conferences, and submissions from claimants and counsel, the Ngā Kōrero Tuku Iho process was established with a series of six hui to hear oral traditions from hapū and iwi groups across the Rohe Pōtae inquiry district. Hui held on marae between March and June 2010 brought together the tāngata whenua of a particular part of the district to present hapū and iwi oral traditions about tribal identity, relationships with the land, and historical events.

The hui gave the Tribunal an early opportunity to engage with the claimants and their issues, and provided evidence that claimant, Crown and Tribunal researchers could use in commissioned reports. The transcripts of the hui have been placed on the Rohe Pōtae record of inquiry as evidence. □

Farewell to Phyllis

There were tears, laughter, and waiata as receptionist Phyllis Fergusson left the Waitangi Tribunal on 9 December 2011 after close to 18 years' service. It was the largest farewell at the Tribunal for a number of years, and was attended by past and present staff. Phyllis's husband, Norm, her sons, John Matai and Tamaariki, and their whanau and friends were also present.

Many heartfelt speeches were delivered, reflecting the wonderful impression that Phyllis has made as the face of the Tribunal. Her welcoming manner, both caring and humble, and her ability to relate to everyone who arrived at the reception desk were acknowledged, as was the pivotal role that Phyllis fulfilled for claimants and Tribunal members.

Along with her receptionist responsibilities, Phyllis also provided the personal touch for many staff, with a friendly ear and a kind word when required. So her absence will be keenly felt by many. Phyllis leaves the Tribunal with our aroha, gratitude, and best wishes for the future. □

Obituaries

Tuahine Joe Northover

The Tribunal lost one its most revered kaumātua with the death of Tuahine Joe Northover in early April 2011. Tuahine, of Ngāti Porou and Ngāti Kahungunu descent, was born at Waipiro on 5 March 1928. While a boarder at Te Aute College during the Second World War, he trained as a pilot at Gate Pa aerodrome. He served as a very youthful fighter pilot in Cyprus immediately after the cessation of hostilities in 1945. He also trained as a farmer at Flock House, near Bulls, and for over 30 years farmed in the Poukawa area of Hawke's Bay.

During most of his adult life, Tuahine was a leader of the Ringatū Church. He recently served as a kaumātua for the New Zealand Police and the Eastern Institute of Technology. When he was welcomed onto the Waitangi Tribunal on Pipitea Marae in 2002, the number of speakers paying him tribute was a measure of his mana. Despite his advancing years and small stature, Tuahine was a towering figure in the Te Urewera inquiry. Thousands, from all walks of life, attended his tangi at Omahu Marae. He is sorely missed by his Tribunal colleagues and whanaunga. □

Evelyn Kupenga

Evelyn Kupenga (Ngāti Porou) passed away suddenly on 16 June 2011. Evelyn had worked in the support services team at the Tribunal for several years. We miss her cheeky grin, her free spirit, and her colourful hats and scarves. □