

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 68



Waitangi Tribunal

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Kaupapa Inquiries Start

IN APRIL 2015, Chief Judge Wilson Isaac, chairperson of the Waitangi Tribunal, released a memorandum to all claimants and the Crown outlining the Tribunal's new kaupapa inquiry programme for general or thematic claims of national scope. This programme is a central feature of the Tribunal's *Strategic Direction 2014–2025*, and in particular for the hearing of claims that have fallen outside the district inquiries.

IN THIS ISSUE, we outline the kaupapa inquiry programme, what the initial inquiries will cover, and the order in which they will proceed. The issues identified for inquiry, reflecting registered claims, are diverse. Some have been partially heard in their local context in district inquiries, or in targeted inquiries into urgent claims. But a substantial number of claims with kaupapa grievances have yet to be fully heard. The new inquiry programme will provide that opportunity for those who wish to bring their kaupapa claims before the Tribunal.

Many kaupapa claims raise contemporary policy issues while some have historical dimensions that may reach back a century or more. Historical grievances relating to war service abroad in New Zealand's armed forces are prominent in the first kaupapa inquiry, into the claims of military veterans. In this issue we introduce the next kaupapa inquiry, due to start during 2015–16,

which will address claims concerning health services and outcomes.

We also review progress in the Tribunal's inquiry work programme over the 18 months since the start of 2014 and briefly indicate what lies ahead. During the coming year, the six district inquiries currently underway will dominate the programme, with the Te Urewera and Whanganui inquiries expected to close with the release of their final reports, Te Rohe Pōtae progressing with the writing of its report after completing its hearings, and Te Paparahi o Te Raki, Taihape, and Porirua ki Manawatū all in or commencing their hearings.

WE ALSO MARK the recent passing of five figures who have played prominent roles in Tribunal inquiries over the years. Professor Alan Ward and Dr Don Loveridge produced authoritative and pioneering research for many Tribunal inquiries over a quarter century of dedicated scholarship. Professor Gordon Orr and Sir John Ingram served, between them, as presiding officer or panel member in a wide range of Tribunal inquiries between the late 1980s and early 2000s. As an iwi leader and expert witness, Erima Henare made a vital contribution for the claimants in the Te Paparahi o Te Raki inquiry and was left all too little time to fulfil his appointment as a Tribunal member. Their achievements are enduring.



From the Chairperson



THE kaupapa inquiry programme, which I communicated to the Crown and all claimants on 1 April 2015, is a major departure. It is the first new programme

that the Tribunal has initiated in the last 20 years and signals the Tribunal's determination to provide access to justice for all claimants who wish to bring their claims before the Tribunal.

The new kaupapa inquiry programme's 11 inquiry themes, outlined in this issue, are broadly conceived. They cover all kaupapa grievances alleged in current claims, whether as the main issue or as part of a wider claim. Just as each district inquiry has been open to all claims arising in the district, so each kaupapa inquiry will enable all claimants with similar grievances to be heard together in a single joint inquiry.

The first kaupapa inquiry, into the claims of military veterans, is already underway. The next, on health services and outcomes, is proposed to start up

in the first half of 2016. The Tribunal intends to maintain the kaupapa inquiry momentum, especially where significant historical and high priority modern issues are involved.

The Tribunal's fortieth anniversary, which falls on 10 October 2015, will therefore witness an active and diversifying inquiry work programme. Its workload has also been expanded over the last two years by a large number of applications for urgency. Many of the applications – and the resulting inquiries where urgency has been granted – concern the Crown's process in Treaty settlement negotiations. Others concern specific local issues (such as removal of the MV *Rena* wreck) or national policy questions (such as rights to freshwater and geothermal resources).

A growing number of applications are for remedies. This option is available where the Tribunal has already reported that a claim is well-founded. If the claimants are concerned that they are about to suffer serious prejudice, they can apply for an urgent hearing on remedies. Often, the concern is about a proposed Treaty settlement that would extinguish the claim. In

that situation, claimants can ask the Tribunal for recommendations (sometimes binding) about how the prejudice should be removed. In recent years, a number of court decisions have clarified how the Tribunal is to deal with remedies applications.

The pace at which the Tribunal can hear claims in its district and kaupapa inquiries will inevitably depend in part on the workload of applications for urgency and, where granted, the urgent inquiries and remedies hearings that follow. The Tribunal sets a high threshold for granting urgency. When it does grant urgency, it aims to deal rapidly and effectively with the urgent situation so as to assist an early resolution, in particular for claims arising from historical Treaty settlement negotiations. This will continue to create challenges for how the Tribunal uses its resources, especially when, as recently, applications for urgency and urgent inquiries are at a high level.

Chief Judge Wilson Isaac
Chairperson



From the Acting Director



IT has been a very busy past few months for the Unit, much of which has been centred around advancing the district inquiry programme, progressing urgent inquiries, and preparing the final versions of the Te Aroha lands settlement process, MV *Rena*, and Māori Community Development Act

urgent reports for release. You will also see in this issue that we are continuing to develop our strategic initiatives through the milestones identified in the work programme and the launch of the kaupapa inquiry programme, with the first kaupapa inquiry, Military Veterans, now well underway.

The strategy we released last year has also resulted in initial work within the Unit to explore potential options for the way in which we will process claims in the future. This is important work, particularly as we think about

the Tribunal's strategic objective to transition from a process heavily tailored to the district inquiries to one that will more appropriately cater for contemporary, kaupapa, and urgent inquiries in the future. This is an exciting opportunity for the Unit and I look forward to leading that ongoing transformation work in the coming months. Tēnā tātou katoa.

Julie Tangaere
Acting Director



The Kaupapa Inquiry Programme

IN 2014, the Waitangi Tribunal outlined its strategic direction for the next 10 years. This included a major new initiative, a programme for kaupapa inquiries (inquiries into general or thematic claims of national scope).

Previously, the Tribunal had prioritised the hearing of claims on a district basis as the best way to help iwi and the Crown achieve Treaty settlements. This left some important claims, which had a national dimension or content that was not specific to a district, waiting in the queue. The only way to jump the queue was to get an urgent hearing. Now that the Tribunal's district inquiry programme is entering its final stages, however, the Tribunal has started a programme of inquiries into these outstanding kaupapa claims.

Many such claims have been filed with the Tribunal over the past 40 years. National Māori organisations have lodged some of them on behalf of all Māori. The Māori Women's Welfare League, for example, filed the original mana wahine claim. Some deal with adoption laws, some with education policies, others with important matters like Māori health or the justice system.

The first of the kaupapa inquiries deals with claims about Māori military veterans. It started in 2014. The presiding officer, Chief Judge Wilson Isaac, has held a judicial conference to assess the scope of the inquiry, the claimants who wish to be heard, and the number and extent of veterans' grievances that they wish to pursue.

Then, in April 2015, the chairperson of the Waitangi Tribunal issued a memorandum to all claimants and the Crown, outlining further the content of the Tribunal's kaupapa inquiry programme. The memorandum explained what the kaupapa inquiries would be, and the order in which the Tribunal would hear them. A copy of

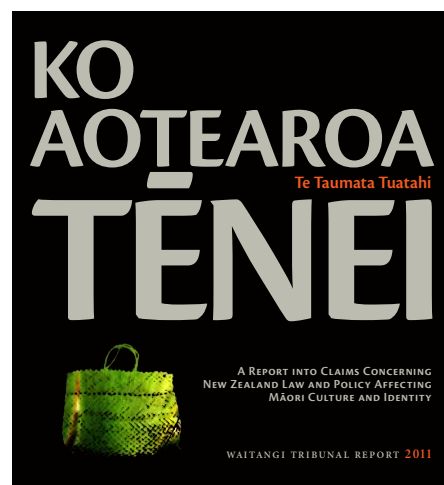
the memorandum can be downloaded from the Tribunal's website.

The purpose of this article is to summarise the memorandum and explain its contents, so that claimants and the public may get a good understanding of what the Tribunal proposes to do over the next 10 years. It is the Tribunal's hope that the kaupapa inquiries will be substantially advanced, perhaps even completed, by 2025.

It is important to stress that the hearing of these claims will not disrupt historical Treaty settlements. Broadly speaking, the grievances and issues are of a general nature, affecting most or all of Māoridom and requiring present-day solutions, often in the field of government policy.

After reviewing the claims currently on its registry, the Tribunal grouped the issues of this kind, as raised by Māori in their statements of claim, into 11 categories. These categories are presently broad and inclusive, and some may overlap. When each kaupapa inquiry begins, the Tribunal will conference with claimants and the Crown to work out more exactly the nature and scope of the grievances that will be the subject of evidence and hearings.

Having grouped the claim issues into 11 inquiries, the Tribunal then set a programme; in other words, it set the order in which the inquiries would be heard. In doing so, the Tribunal



Some kaupapa issues have featured in previous Tribunal inquiries.

took into account a number of factors affecting their priority. These were:

- ▶ the potential removal of the Tribunal's ability to inquire;
- ▶ the immediacy of the take (issue) or potential remedy;
- ▶ the seriousness of the alleged Treaty breach or prejudice; and
- ▶ the importance of the take to Māori generally and to the nation.

The order is not set in stone, and the Tribunal will continue to re-evaluate and consider the priorities. One change has already been made. Based on the immediacy and seriousness of the health issues facing Māori today, the health inquiry has been moved up the list to second place. This inquiry is described in more detail elsewhere in this edition of *Te Manutukutuku*.

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The kaupapa inquiries, in order of hearing, will be as follows:

1. Māori military veterans: currently underway.
2. Health services and outcomes: scheduled to start in the 2015–16 financial year.
3. Constitution, self-government, and electoral system.
4. Mana wahine and mana tāne.
5. Education services and outcomes.
6. Identity and culture (including adoption laws, burials, heritage, physical taonga, and many other matters).
7. Natural resources and environmental management.
8. Social services, social development, and housing.
9. Economic development.
10. Justice system.
11. Citizenship rights and equality.

The table following this article gives a brief outline of some of the claim issues that each inquiry may cover.

As the time comes nearer for each kaupapa inquiry to begin, the Tribunal will inform the Crown and claimants so that all who have an interest in a particular inquiry can advise the Tribunal and participate in conferences to define the content and coverage of the inquiry. Early questions will include: Do the claimants and the Crown wish to proceed with hearing these matters? Are they ready to engage with the Tribunal? At this point, if the answer is 'yes', the Tribunal will need to determine who is entitled to have their claims heard.

Claimants and the Crown will need to sort out whether issues:

- ▶ have already been settled in an iwi Treaty settlement; or
- ▶ have already been heard and reported on sufficiently by the Tribunal.

This is because it would be unlawful for the Tribunal to inquire into claims that are settled by legislation, and unnecessary for it to hear claimants on the same matter twice. Some health issues, for example, have already



Pioneer Battalion performing a haka for ministers Massey and Ward, Bois-de-Warnimont, France, 30 June 1918. The inquiry into Māori military veterans' claims has begun.

Henry Armytage Sanders (Alexander Turnbull Library, 1/2-013282-G)



Nan Bella teaching children Māori vowel sounds at Waiwhetu School, 1991. The programme includes an inquiry into education issues.

Mark Coote (Alexander Turnbull Library, EP/1991/2155/3-F)

been dealt with in the district inquiries in respect of particular iwi. The intention is not to deny any claimant a fair hearing but to ensure a hearing focused on disputes that are still live between the Crown and Māori, so that the Tribunal can still assist their resolution with its findings and recommendations.

Having defined the claims and issues to be heard, the Tribunal would then conference with the Crown and claimants to set an inquiry process. This will likely resemble the current

district inquiries. Research would be needed first. Then, claimants would define their grievances fully, and the Crown would develop its position and concessions (if any). After that, the Tribunal would hold hearings and release its report. The report would detail whether the claims are upheld and the Treaty has been breached, and, if so, would give recommendations for how to remove the prejudice suffered by Māori.

There is flexibility to adapt this inquiry process to the needs of the

No	Inquiry	Indicative scope of issues in current registered claims
1	Māori military veterans	Discrimination, treatment, rehabilitation, farm settlement
2	Health services and outcomes	Hospitals, primary healthcare, rongoā, provision for the disabled, rehabilitation, elder care and rest homes, mental health, smoking, HIV / AIDS, public health, health promotion, occupational health, poor health status and outcomes
3	Constitution, self-government, and electoral system	Constitutional law, sovereignty; provision for the exercise of Māori self-government; electoral regime, political representation in national, local and specialised bodies
4	Mana wahine and mana tāne	Discrimination against women, status of men, services for women, refugees
5	Education services and outcomes	Primary and secondary schools, tertiary education, curricula, education finance; kura kaupapa and wānanga
6	Identity and culture	Adoption, guardianship, wards, whāngai; custody and access control; coronial law and practices, burials; genetic modification; material culture: mokomokai, artefacts, heritage, museum collections, archives, monuments, films/audiovisual
7	Natural resources and environmental management	Minerals (surface, underground, offshore); atmospheric resources; foreshore and seabed; water; regulation of fishing, water quality, pollution; marine reserves, customary fishing, whales, dolphins, impact of pollution and run-off on coastal marine resources, commercial overfishing
8	Social services, social development and housing	Urban and rural housing provision, state housing; processes of impoverishment, urbanisation policy and impacts; welfare provision, social development, child protection, family well-being; gambling, alcohol
9	Economic development	Taxation: rates, rating, land valuation, land tax, death duties, control of taxation and revenue; carbon taxation, emissions trading scheme, impact on Māori forestry; Māori economic development institutions and law
10	Justice system	Legal aid, barriers to accessing courts, colonial justice system, Supreme Court/Privy Council; criminal justice system; Māori land law, succession, court procedure and costs
11	Citizenship rights and equality	Human rights, racial discrimination

The Chairperson's memorandum setting out the kaupapa inquiry programme can be downloaded from: www.justice.govt.nz/tribunals/waitangi-tribunal/news/

Crown and claimants. Early hearings of Māori oral evidence, for example, might be held if there were reason to do so. Some issues may need to be split off for hearing separately or for targeted reporting. Other process innovations could be necessary. These will be matters for the claimants, the Crown, and the Tribunal to work out in each kaupapa inquiry.

From time to time, new kaupapa grievances may arise. If that happens, it will be open for the claimants to

propose that they be heard in one of the 11 inquiries, or that an additional kaupapa inquiry be held. Any new inquiry would come at the end of the current programme unless the Tribunal decided, in light of the four priority factors, to place it higher in the order of inquiries.

Finally, it is always open for the claimants to seek an urgent hearing at any time, should they feel that they are about to suffer significant and irreversible injury from a pending

Crown action. In the past, kaupapa claims, such as the radio spectrum claim and the petroleum claim, have been granted an urgent hearing in this way.

With its kaupapa inquiry programme, the Tribunal hopes to bring justice to Māori and assist in the resolution of important, sometimes long-outstanding Treaty claims, so that Māori and the Crown can move forward in mutual partnership and prosperity. □

New Directions

THE last 18 months have brought the Waitangi Tribunal's inquiry programme to the threshold of major change. In July 2014, the chairperson, Chief Judge Wilson Isaac, launched the Tribunal's new *Strategic Direction*, which outlined its overarching aim of completing the great majority of claims by the mid-2020s. The kaupapa inquiry programme is already underway and more new initiatives are planned for the coming year. At the same time, the Tribunal has progressed the final district inquiries and an unprecedentedly high number of applications for urgency and remedies, and, where granted, the ensuing inquiries.

In this period, the Tribunal has released five reports, advanced the writing of three more, started hearings in two large district inquiries, and progressed planning and casebook research for what are likely to be the two final inquiries in its long-running district inquiry programme. It has also considered a large number of applications for urgency and, increasingly, remedies.

District inquiries

The final district inquiries are well advanced in preparation, hearing, or report writing. They embrace nearly half of the 1800 claims not yet fully reported on or settled. To date the Tribunal:

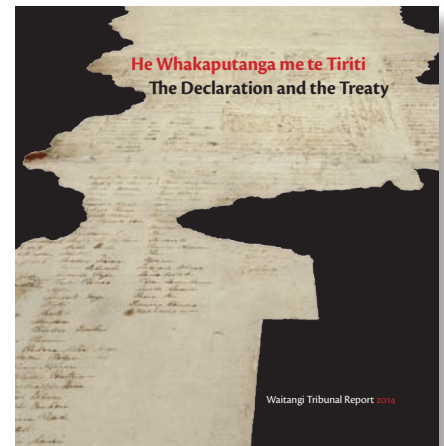
- ▶ has completed reports on 18 of the Tribunal's 37 inquiry districts nationwide, covering 76 per cent of New Zealand's land area; and
- ▶ is preparing, hearing, or writing reports on some 850 claims in six inquiries covering another 11 districts and 15 per cent of New Zealand's land area.

When completed, the Tribunal will have reported on claims in 29 districts covering 91 per cent of New Zealand's land area. Many claimants have since settled, or are negotiating or preparing to negotiate the settlement of their Treaty claims with the Crown. In the remaining eight of the 37 districts, iwi or hapū have settled or are negotiating directly without a Tribunal inquiry.

Reports released

During this period, the Tribunal produced reports on two district inquiries:

- ▶ **Te Urewera:** In December 2014, the Tribunal released part 5 of its pre-publication *Te Urewera* report. This part focused on claims about Lake Waikaremoana (for a summary, see *Te Manutukutuku* issue 67).
- ▶ **Te Paparahi o Te Raki (Northland):** In November 2014, the Tribunal released *He Whakaputanga me te Tiriti / The Declaration and the Treaty*, its report on stage 1 of its regional inquiry, which focused on Crown and Māori understandings of He Whakapūtanga o te Rangariratanga (the Declaration of Independence) and Te Tiriti o Waitangi (the Treaty of Waitangi). The Tribunal handed over the report at a ceremony at Te Tii Marae, Waitangi, attended by several hundred claimants. The central question addressed in the report was whether Ngāpuhi rangatira of the Bay of Islands and Hokianga ceded sovereignty to the British Crown in signing te Tiriti and, if not, their understanding of the relationship they were establishing with the Crown. The Tribunal's conclusion was that they did not cede sovereignty, but agreed to share power and authority



with Britain (for a summary see *Te Manutukutuku* issue 67).

Reports in preparation

Three district inquiry reports are currently in preparation:

- ▶ **Whanganui Land:** The Whanganui Tribunal is well advanced in the writing of its report. Following consultations with the claimants, the panel decided to focus on nine central issues in the inquiry (see *Te Manutukutuku* issue 64). The presiding officer, Judge Wainwright, indicated to the parties that the Tribunal aims to release the report in September 2015.
- ▶ **Te Rohe Pōtae (King Country):** Following the completion of its hearings in February 2015, the Tribunal has commenced the preparation of its report.
- ▶ **Te Urewera:** The sixth part of the *Te Urewera* report will focus on the socio-economic status of Te Urewera communities in the twentieth century and on river and environmental issues. It is due for pre-publication release in the second half of 2015. The Tribunal will then produce and release the final version of the report as a whole.

Inquiries in hearing

Three large district inquiries have been in hearing:

► **Te Rohe Pōtae (King Country):** Hearings into some 270 claims concluded in February 2015. Following six ngā kōrero tuku iho (claimant traditional evidence) hui in the first half of 2010, in which claimants presented oral and traditional evidence to the Tribunal, hearings opened at Te Tokanganui-a-noho Marae in Te Kuiti in November 2012. An intensive programme of 17 hearings followed over the next 2½ years, concluding in December 2014 and February 2015 with the hearing of the parties' closing submissions.

► **Te Paparahi o Te Raki (Northland):** The Te Paparahi o Te Raki regional inquiry embraces seven taiwhenua or sub-regions and involves some 390 claims. Stage 2, covering all post-1840 claim issues, commenced at Te Tiriti o Waitangi Marae in March 2013. The hearings combine region-wide themes with local claim issues. They are planned to run in four rotations around the sub-regions. The first rotation (eight hearings) finished in April 2014 and the second (five hearings) a year later. The third rotation (eight hearings) commenced at Whitiōra Marae and the Returned and Services Association, Kerikeri, in June 2015.

On the current schedule, the 21 stage 2 hearings are due to finish in November 2016. The claimants have recently requested additional hearing time and, following a consultative conference in May 2015, the Tribunal is now considering the submissions of the parties.

Meanwhile, the Tribunal-commissioned casebook programme of research on local issues, which began in early 2014, is progressing steadily.

► **Porirua ki Manawatū:** The Porirua ki Manawatū inquiry includes



Claimant kaumātua at the hearing of closing submissions in Te Kuiti in December 2014. From left to right: Hone Henare, Te Pare Joseph, Tiwha Bell, Robert Koroheke, Duke Hetet, and Harold Maniapoto.

around 100 claims. A round of ngā kōrero tuku iho hui, which began with evidence from Muaūpoko at Kawiu Marae, Levin, in February 2014, has recently concluded with Te Ati Awa/Ngāti Awa at Whakarongotai Marae, Waikanae, in April 2015.

In light of the start of settlement negotiations between the Muaūpoko Tribal Authority and the Crown, the Tribunal decided to expedite its inquiry into the Muaūpoko claims before it. Research is due to be completed by August 2015, hearings in October and November 2015, and a preliminary report in 2016 to assist all parties towards an early settlement of Muaūpoko claims.

For the rest of the inquiry, which focuses on the claims of Ngāti Raukawa and other iwi and hapū, the Tribunal has set a casebook research programme.

Inquiry in preparation

The final district inquiry, Taihape, is in active preparation for hearing. The inquiry includes around 30 claims. It is

now well advanced with its casebook research, most of which is set for completion towards the end of 2015.

Ngā kōrero tuku iho hui are due to start in late 2015 and hearings in mid-2016.

Kaupapa inquiries

In April 2015, the chairperson set the framework and schedule for the new kaupapa inquiry programme (described elsewhere in this issue). By this time, the first kaupapa inquiry, announced at the launch of the Tribunal's *Strategic Direction* in July 2014, was already underway:

► **Military veterans:** The presiding officer, Chief Judge Wilson Isaac, called the first consultative conference for December 2014. Preparatory work is now underway to establish which claims are eligible to participate, and the main issues for inquiry. So far, more than 70 claims have indicated an interest in being heard.

During the second half of 2015, the Tribunal plans to hold claimant oral evidence hui and set a casebook research programme.

- ▶ **Health services and outcomes:** The next kaupapa inquiry will focus on issues concerning health service delivery and health outcomes for Māori (introduced elsewhere in this issue). The inquiry is expected to begin its preparatory steps in the first half of 2016.

Urgencies, remedies

Between January 2014 and May 2015, the Tribunal received some 20 applications for an urgent hearing and a total of 28 were under consideration at some point during this period. Of this total, three were granted, 12 declined, three adjourned or deferred, and 10 were awaiting determination or on hold at the request of the parties.

Most applicants for urgency and remedies raised allegations concerning the settlement negotiations process. They focused mainly on Crown recognition of the mandates of Māori groups to negotiate and settle Treaty claims and on the terms of settlement. Other applications concerned particular Crown policies and actions.

Reports completed

Since January 2014, the Tribunal has released three reports on urgent inquiries (for summaries, see *Te Manutukutuku* issue 67):

- ▶ **Te Aroha Maunga Settlement Process (Wai 663):** In June 2014, the Tribunal released its report on a claim by Ngāti Rāhiri Tumutumu concerning the Crown's Treaty settlement process in Hauraki. The Tribunal found that the Crown's conduct of the negotiations was consistent with Treaty principles.
- ▶ **mv *Rena* (Wai 2391, 2393):** In June and December respectively, the Tribunal released interim and final reports on the mv *Rena* and Motiti Island claims. The claims concerned the Crown's position and actions

affecting the removal of the remains of the wreck of the *Rena* from Otaiti (Astrolabe Reef) off Tauranga. The Tribunal found that the Crown had breached Treaty principles and made specific recommendations for mitigating the prejudice through the resource consent process.

- ▶ **Māori Community Development Act (Wai 2417):** In December 2014, the Tribunal released *Te Mana Motuhake/In Pursuit of Mana Motuhake*, its report on the New Zealand Māori Council's claim concerning the process adopted by the Crown for the reform of the Māori Community Development Act 1962, in particular the Crown-led consultation process and the effects of the reform on the New Zealand Māori Council and the Māori Wardens. The Tribunal found breaches of Treaty principles, and made recommendations for a Māori-led future reform of the Act.

Urgencies underway

The Tribunal currently has two urgent inquiries underway:

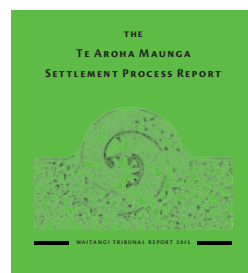
- ▶ **National Freshwater and Geothermal Resources, Stage 2 (Wai 2358):** The Tribunal agreed to a joint proposal from the Crown and claimants that the inquiry should be narrowly focused on a single issue question: 'what further reforms need to be implemented by the Crown in order to ensure that Māori rights and interests in specific water resources as found by the Tribunal at Stage 1 are not limited to a greater extent than can be justified

in terms of the Treaty?' Following delays in the proceedings at the request of the parties, the Tribunal consulted them at a conference in June 2015 and subsequently agreed to a Crown request for an adjournment to allow it time to discuss future water reforms with the Iwi Leaders Group before consulting Māori more widely in early 2016. Although removing the inquiry's urgent status, the Tribunal has maintained priority for the hearing of freshwater issues and will resume the inquiry in February 2016.

- ▶ **Ngāpuhi Mandate (Wai 2490):** The Tribunal granted urgency in September 2014 to applications from a number of Northland claimants challenging the Crown's recognition of the mandate of Tuhoronuku to represent Ngāpuhi in negotiations for a Treaty settlement. Hearings were held in December 2014 and March 2015, and the Tribunal's report is now in preparation.

Future directions

The Tribunal's *Strategic Direction* outlines a comprehensive approach for addressing most registered claims over the next 10 years. Its strategic goals focus first on completing historical and high priority kaupapa claims by 2020. Alongside the final district inquiries, the new kaupapa inquiry programme has been set and the first two inquiries are starting. The next step will be to develop, during the coming year, a process for considering remaining historical claims that have fallen outside district inquiries. □



He Aitua

RECENT MONTHS have seen the passing of several Tribunal members and historians who have made notable contributions to the work of the Tribunal.

Professor Alan Ward

1935–2014

Alan Ward grew up on a dairy farm near the tiny village of Waipaoa, inland from Gisborne. He boarded at Gisborne High and completed a history degree at Victoria University of Wellington before going on to research at the Australian National University in Canberra and a 30-year career teaching history at Australian universities.

During the 1970s and 1980s, Professor Ward worked on land reform in New Guinea, Vanuatu, and New Caledonia. But New Zealand remained a central focus of his historical research. His 1974 book *A Show of Justice*, a searing indictment of nineteenth-century colonialism in New Zealand, inspired a generation of historians and campaigners for the redress of historical wrongs.

In the Ngāi Tahu inquiry, the Tribunal's first major district inquiry, Professor Ward led a team commissioned by the Tribunal to prepare historical evidence. This proved invaluable for the Tribunal's report (released in 1991), which in turn contributed to the settlement of Ngāi Tahu's Treaty claims in 1998.

The then chairperson of the Waitangi Tribunal, Chief Judge Sir Edward Taihakurei Durie, entrusted Professor Ward with the compilation of the Rangahaua Whanui National

Overview report. Published in 1997, the overview synthesised Tribunal-commissioned district and national theme reports covering the whole country. It provided an authoritative scholarly framework for the Tribunal's district inquiry programme, in which most of the large historical Treaty claims have been heard.

Professor Ward later worked for claimants and the Crown, as well as the Tribunal. It is only possible to mention a few of his contributions here. In 2003, he presented evidence for Te Atiawa in the Te Tau Ihu district inquiry. He also assisted the Hauraki Tribunal in the writing of its report, released in 2006. In 2010, he appeared as a Crown expert witness in the Te Raki o Te Paparahi Tribunal's inquiry into Crown and Ngāpuhi understandings of the Treaty and the 1835 Declaration of Independence. These highlights gave expression to a lifetime's belief that the Tribunal's work could help redress the ills of New Zealand society, not just for Māori but for all New Zealanders.

Dr Donald Loveridge

1950–2015

Don Loveridge, whose father was an officer in the Canadian Royal Regiment, grew up living near military bases in British Columbia and Manitoba. Dr

Loveridge came to New Zealand during the early 1980s with a doctorate on the history of Canadian public lands policy from the University of Toronto.

Starting in 1988, with the first dedicated Treaty unit at the Crown

Law Office, Dr Loveridge led the Crown's historical research for the Ngāi Tahu inquiry. Over the following quarter century he became a stalwart of the Crown's research for Tribunal inquiries, contributing in the Ngāi Tahu, Muriwhenua, Rekohu (Chatham Islands), Hauraki, Kaipara, Whanganui, and Te Paparahi o Te Raki district inquiries, amongst others. He also produced substantial reports on generic historical issues that featured in a number of Tribunal inquiries.

Although primarily serving the Crown, Dr Loveridge also gave his professional assistance more widely. This included claimant research commissioned by the Crown Forestry Rental Trust and a Tribunal-commissioned Rangahaua Whanui report on twentieth-century Māori Land Boards. At the time of his sudden death he was preparing Crown research for the Te Paparahi o Te Raki inquiry. The quality of his historical scholarship was respected on all sides and his engagement in the historical debates on Treaty issues will be sorely missed.

Professor Gordon Orr

1926–2015

Gordon Orr was a determined advocate of social justice. Having grown up in a Masterton orphanage during the Depression years, he

worked his way through law school at Victoria University of Wellington. In 1958, he gave up a successful law partnership in Wellington to move to the Crown Law Office, where for several years he was senior Crown counsel. In



the 1970s, he served as deputy chairperson of the State Services Commission and later Secretary for Justice before moving back to Victoria University as Professor of Constitutional Law from 1979 until 1987.

Following his appointment as an emeritus professor in 1987 on retiring from Victoria University, Professor Orr was appointed to the Waitangi Tribunal and served as a full-time member. He was a member of the Ngāi Tahu, Taranaki, Whanganui River, and Rekohu inquiry panels. He also presided over the Te Whanganui a Tara (Wellington) district inquiry, which reported in 2003.

During the early 1990s, Professor Orr also presided over or was a panel member in a range of issue-focused kaupapa inquiries. They included inquiries into the Ngawha and Te Arawa geothermal resources and the Māori electoral option. Notably, he presided in the urgent Turangi Township inquiry, in which in 1998 the panel took the first step towards exercising the Tribunal's mandatory powers to award redress. This is to date the only occasion on which the Tribunal has taken this step.

The Tribunal and senior members of the legal profession were well represented at Professor Orr's Herenga Waka Marae farewell on 23 March 2015, where Justices Williams and Durie, former Chairpersons of the Waitangi Tribunal, delivered eulogies.

Sir John Ingram

1924–2015

John Ingram attended Nelson College, trained as an engineer at Canterbury University College, and went on to become a leading



businessman after 1950. He served on the boards of directors of many large companies such as Feltex, IBM New Zealand, Pacific Steel, and the National Bank of New Zealand. He played a key role as managing director of New Zealand Steel, leading the company through its first 15 years after being appointed in 1969. He was knighted in 1994 for services to manufacturing and the engineering profession. Outside the business domain, Sir John was a member of the University of Auckland Council for 18 years, a trustee of both the World Wildlife Fund and Antarctic Heritage Trust, and a member of the Auckland Area Health Board.

Sir John was appointed to the Waitangi Tribunal in 1992. During the 1990s he served on the Maori Development Corporation, Te Whanganui a Orotu (Napier Inner Harbour), and Te Whanau o Waipareira inquiries. The Tribunal benefited from his wealth of experience in business and institutional leadership.

Erima Henare

1953–2015

Erima Henare (Ngāpuhi–Ngāti Hine, Ngāti Wai, Ngāti Kuri, Ngāti Kahu, Ngāi Takoto, Te Aupōuri, Te Rarawa, and Ngāti Whātua) was



the son of Māori Battalion wartime commander Sir James Henare and grandson of Tau Henare, the member for Northern Māori from 1914 to 1938. His sudden death in May 2015 ended a long and distinguished record of iwi and public service, which included senior roles in the Department of Māori Affairs, the Iwi Transition Agency, and the Ministry of Foreign Affairs.

Mr Henare was the chair of Te Taura Whiri i Te Reo Māori/the Māori Language Commission and a tireless advocate for te reo. Among other public, advisory, and educational sector posts, he was executive director of Māori at the Open Polytechnic of New Zealand, and a board member of the Waitangi National Trust and of Heritage New Zealand Pouhere Taonga and its Māori Heritage Council. He was an adviser to King Tuheitia Paki.

Mr Henare was a rangatira of Ngāti Hine and an acknowledged authority on the ancient and modern history, whakapapa, reo, and tikanga of Te Tai Tokerau. Having returned home to the North at the request of his people, he served as chief executive of the Ngāti Hine Health Trust and chair of the Tai Tokerau Primary Health Organisation. He also played a pivotal role as a leader and expert witness for his people in the Tribunal's Te Paparahi o Te Raki (Northland) inquiry, speaking authoritatively on He Whakaputanga/the Declaration of Independence and Te Tiriti/the Treaty of Waitangi.

Mr Henare was appointed a member of the Tribunal in 2011. His untimely passing cut short the invaluable contribution he would undoubtedly have made to the work of the Tribunal.

Judges and members of the Waitangi Tribunal were among the thousands who attended his tangi-hanga at Otiria Marae. □

Te Rohe Pōtae Hearings Finish

February 2015 saw the end of hearings in the Te Rohe Pōtae district inquiry, one of the Tribunal's largest with over 270 claims. At this seventeenth and final hearing, held in the James Cook Hotel in Wellington with a video link to Te Awamutu, Crown counsel completed their closing submissions on both 'generic' topics and claim-specific issues. Closing submissions are the part of the hearings where the parties sum up all the evidence and arguments that have been presented, and make their final arguments to the Tribunal.

At the preceding hearing, held in December 2014 at the Waitomo Cultural and Arts Centre in Te Kūiti, claimants and their counsel completed their closing submissions. Ngāti Maniapoto, the principal iwi in the inquiry district, said that following the New Zealand wars and land confiscations of the 1860s and the exclusion of the Crown and its supporters from their rohe, in the 1880s Maniapoto rangatira sought to establish a relationship with the Crown. Joining Ngāti Tūwharetoa, Raukawa, Ngāti Hikairo, and upper Whanganui iwi, they set out their expectations in return for allowing the construction of the North Island Main Trunk railway across their land. How adequately these understandings, known to the claimants as Te Ōhāki Tapu (the sacred compact), were fulfilled was a central issue in the inquiry.

The Crown said that the Te Ōhāki Tapu agreements were a compromise by the Rohe Pōtae leadership. To allow their people full access to the colonial economy, some measure of political autonomy had to be sacrificed. The Crown's position was that the agreements were political in nature rather than constitutional. They formed an



Members of the Te Rohe Pōtae Tribunal panel. From left to right: John Baird, Professor Pou Temara, Professor Ranginui Walker, Dr Aroha Harris, and Judge David Ambler.

accord that relied for its fulfilment on trust and the mutual good faith of both parties.

For its part, the Crown had to take seriously the concerns expressed by Te Rohe Pōtae Māori about a range of historical issues. The Crown confirmed its previous concessions of Treaty breach and several additional concessions concerning specific land transactions, Crown land purchasing tactics, and Crown representations during negotiations over the North Island Trunk Railway.

This has been a long journey for the claimants, the Crown, and the Te Rohe Pōtae Tribunal, through six ngā kōrero tuku iho (claimant traditional evidence) hui and 17 hearings over a span of five years. The Tribunal heard claimant, Crown, and technical evidence on a wide range of historical and contemporary issues and visited all corners of the inquiry district, from Whāingaroa, Kāwhia, and Te Awamutu in the north to Mōkau, Waimiha, and Taumarunui in the south.

Ngāti Maniapoto said that they looked forward to a new relationship

with the Crown as a result of the hearing of their historical Treaty claims. The Crown, for its part, saw the inquiry, and the Tribunal's report to come, as important steps towards the resolution of the historical claims of Te Rohe Pōtae Māori and the rebuilding of a stronger and healthier relationship between the Treaty partners. Crown counsel, Geoff Melvin, acknowledged the aroha, dignity, and hospitality shown to the Crown throughout the inquiry.

In closing the hearings, Tribunal kaumātua member Professor Hirini Mead responded: 'What we have seen and as we have come through nine years of meeting is that the process also helps us as people to grow.' He concluded: 'Ka mihi ki a tātou katoa. Ehara i te mea nā te Rōpū Whakamana i te Tiriti o Waitangi anake i kawē tēnei kaupapa engari nā te katoa.' (And thank you all. It is not as if it was the Waitangi Tribunal alone who carried this process, but rather all of us played a part.)

The Tribunal has now begun the writing of its report. □

Māori Health: Next Kaupapa Inquiry

IN the 2015–16 financial year, the Waitangi Tribunal plans to begin its next kaupapa inquiry, which will focus on claims about health services and outcomes for Māori.

According to the Tribunal's Wai 262 report *Ko Aotearoa Tēnei*, which was published in 2011, the Māori people are currently undergoing a very serious health crisis. Not only is the Māori life expectancy significantly lower than that of non-Māori, but Māori are greatly over-represented in statistics concerning poor health. Investigating the background to Crown policies towards rongoā (Māori traditional healing practices), the Tribunal wrote:

In fact, contemporary Māori health status is so bad it would be wrong to describe it as anything other than a further calamity, even if it represents an undoubted improvement on a century earlier. Compared with non-Māori, Māori today have much higher rates of heart disease, stroke, heart failure, lung cancer, diabetes, asthma, chronic obstructive pulmonary disease, infant mortality, sudden infant death syndrome (cot death), meningococcal disease, schizophrenia, and other illnesses. Māori males have much higher rates of motor vehicle accident deaths and suicides (in the latter case, after having had much lower rates of suicide until the 1980s). Māori have much higher rates of interpersonal violence and unintentional injury. They are less likely to consult a doctor, with cost and the lack of access to a vehicle being more common reasons among Māori than among non-Māori. Māori also have worse oral health, and are less likely to visit a dentist. Māori have much higher rates of smoking, with 53 per cent of adult Māori women being smokers. Māori adults are much more likely to have potentially hazardous drinking patterns, and regular marijuana smoking is significantly more prevalent among

Māori adults than non-Māori. Māori are also much more likely to be obese than non-Māori. Many of these illnesses and problems are practically at epidemic levels.

Although the Tribunal stressed that some health issues are strongly linked to poor housing and socio-economic status, it also found that health will not automatically improve with standards of living. The issues are complex, and Māori argue that the Crown is not meeting its Treaty responsibilities in the delivery of health services to them.

Some such claims about health services and outcomes are local in nature and have been dealt with in district inquiries, but others are not. Māori have lodged claims about the national framework for primary health care,

the delivery of services to particular groups (such as the deaf, the blind, and the mentally ill), reducing particular causes of ill-health amongst Māori (such as smoking and HIV/AIDS), the alleged disparity in the services provided to Māori and non-Māori, the cultural framework for health policies and delivery of services, and, of course, the very clear disparities in health outcomes for Māori and non-Māori. Many Treaty breaches are alleged amongst the more than 100 outstanding claims that raise health-related grievances.

Given the seriousness of the Māori health crisis, which the Wai 262 Tribunal called a 'calamity', the Tribunal has prioritised the health kaupapa inquiry to begin in the next 12 months. □

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

—Constitution of the World Health Organization

