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 75

Waitangi Tribunal

Kei Roto | Inside

The Waitangi Tribunal
Level 7, Fujitsu Tower
141 The Terrace
Wellington
New Zealand
DX SX11237
Tel: 64 4 914 3000
Fax: 64 4 914 3001
www.waitangitribunal.govt.nz

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

Reports and New Inquiries

The springhead at Porotī and the headwaters of the Waipao Stream, near Whāngarei. Porotī Springs is a taonga considered in the Tribunal's stage 2 freshwater report.

In recent months, the Tribunal's inquiry programme has seen a high level of activity across a wide range of Tribunal inquiries, with as many as 22 under way at various points during the period. In addition to parts 3 and 4 of the Te Rohe Pōtae panel's report on its district inquiry, the Tribunal released six reports between June and December 2019. In this issue we cover three: on stage 1 of the Health Services and Outcomes kaupapa inquiry, focusing on primary health sector claims; on Māori prisoners' voting rights; and stage 2 of the National Freshwater and Geothermal Resources inquiry, concerning freshwater issues.

Three reports on urgent inquiries were released in December: on the Maniapoto and Mana Ahuriri mandates for Treaty settlement negotiations and on overlapping claims in the Hauraki settlement process. They will be covered in the next issue of *Te Manutukutuku*.

Several new inquiries have also got under way. Panels were appointed to conduct the next two inquiries in the kaupapa programme, Mana Wāhine and Housing Policy and Services, which have begun their preparatory work. The last of the district inquiries, North-Eastern Bay of Plenty, was also launched, as was an urgent inquiry into claims concerning Oranga Tamariki (Ministry for Children).

The next issue will cover progress in these developing inquiries. ❐

From the Chairperson

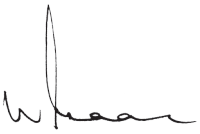
As a commission of inquiry, the Waitangi Tribunal speaks through its reports. Since mid-2019, we have released eight reports and we expect to release several more in the first half of 2020.

These reports, completed between June and December 2019, exemplify the diversity and reach of the Tribunal's inquiry programme. Parts 3 and 4 of the Te Rohe Pōtae Tribunal's district inquiry report address a broad range of mainly twentieth-century historical issues, including land alienation, public works takings, local government and environmental management. Three reports concern contemporary kaupapa issues affecting Māori nationally, on the primary health sector, on freshwater policy and management and, under urgency, on the removal of Māori prisoners' voting rights. Three further urgent reports addressed the Crown's processes for recognising mandates in Treaty settlement negotiations and for

accommodating overlapping claimant interests.

All of the recent kaupapa and urgent reports, including those on large and complex subjects such as freshwater and primary health, have been produced within months of the filing of the parties' final closing submissions. This reflects the Tribunal's commitment to delivering rapid and practical results on pressing contemporary issues. The Tribunal panels concerned and the staff supporting them are to be commended for these achievements.

The scope of the recent reports also signals that the Tribunal's inquiry landscape has changed substantially since its strategic direction was launched in 2014. The final district inquiries have some years to run; urgent inquiries have been more frequent; more claimants with claims previously adjudged well-founded are returning to the Tribunal for remedies; and both claimants and Crown have tended to prioritise present-day rather than historical issues for kaupapa inquiry. The Tribunal is currently reviewing its strategic goals and will issue an updated statement later this year.



Chief Judge Wilson Isaac
Chairperson

From the Acting Director

Tēnā koe and welcome to issue 75 of Te Manutukutuku.

I write this article nine months into my role as Acting Joint Director of the Waitangi Tribunal and the Māori Land Court. Over the past nine months I have had the opportunity to delve deeper into the Waitangi Tribunal's full and varied work programme. I have seen first-hand the opportunities and challenges we face as I engaged with some of our stakeholders and in the day to day processes that make up the work of the Tribunal. This insight has truly highlighted the changing nature of our work and the continued challenges that the Tribunal will face in delivering its inquiry programme.

The second half of 2019 saw the release of several Tribunal reports. These reflect the variety of subject matter now in the Tribunal work programme. The completion of these reports in such a short space of time is a testament to the knowledge and expertise of the Waitangi Tribunal and our staff and I continue to be deeply impressed by the passion and commitment shown towards our goals. Underlying the reports is the foundation of research, inquiry facilitation, registrarial work, and claims coordination which enables the growing momentum in our inquiry work.

I continue to focus on increasing our overall cultural capacity across the unit. In the last six months we have worked to strengthen our tikanga and te reo capability and to further develop the way we work together as a unit. In October 2019, staff gathered for a two-day noho marae at Maraeroa

Members in Honours List

Achievements and service recognised in the 2020 New Year honours list

Justice Joe Williams was made a Knight Companion of the New Zealand Order of Merit for services to the judiciary. While Chief Judge of the Māori Land Court, Sir Joe served as Deputy and Acting Chairperson of the Waitangi Tribunal from 1999 to 2004 and then as Chairperson up to his appointment to the High Court in 2008. He was appointed to the Court of Appeal in December 2017 and as the first Māori judge of the Supreme Court in May 2019.

Dr Aroha Harris was made a Member of the New Zealand Order of Merit for services to Māori and historical research. Dr Harris was appointed as a member of the Waitangi Tribunal in 2008. She stepped down in August 2019 but continues as a member of the Te Rohe Pōtae inquiry panel.

marae in Porirua (see photo on page five). The focus of this noho was on whakawhanaungatanga and mahi tahi. It is through these opportunities that the unit will continue to develop to meet the demands of our unique environment.

As we begin a new calendar year, I look forward to continuing my support of the Waitangi Tribunal and its inquiry programme.

He mihi nui

Renee Smith
Ngāti Porou, Ngāti Kahungunu

Do You Want to Stay Up to Date with Waitangi Tribunal Matters?

If so, subscribe to Te Manutukutuku.

Simply email your name, phone number, and postal address (including postal code) to:

WaitangiTribunal@justice.govt.nz

and put "Subscribe" in the subject line

Staff Profiles

Jamie-Lee Tuuta

Jamie-Lee Tuuta (Ngāi Tahu, Ngāti Mutunga o Wharekauri and Ngāti Toa Rangatira) joined the Waitangi Tribunal Unit in July 2019 in the role of Registrar. Jamie-Lee is the lead legal advisor and provides technical leadership to the Unit.

Jamie-Lee grew up in Ōtautahi. She attended the University of Canterbury, where she graduated with a Bachelor of Laws and Bachelor of Arts with a double major in Psychology and Māori and Indigenous Studies. Since graduating, she has worked with iwi, the community and in private practice as a lawyer, providing a range of advice and support to her clients.

Prior to joining the unit, Jamie-Lee was in private practice at the firm Brandts-Giesen McCormick. She appeared regularly in court on a range of family, Māori land and criminal law matters. She did a large amount of legal aid work and represented clients in a range of mediations. She also completed a number of cultural reports for criminal sentencing in the District Court, High Court and Court of Appeal.

Outside of work, Jamie-Lee spends most of her time with her whānau. She also enjoys being actively involved in the community, completing a wide range of volunteering work. She is a former highland dancer and has also played the bagpipes. She danced at the Edinburgh Military Tattoo in 2005. She is still actively involved in the dancing community and adjudicates dancing competitions regularly around the country.

Jamie-Lee is humbled at the opportunity to serve the Tribunal and is currently working hard to continue to uplift the work of the unit.

Registrar Jamie-Lee Tuuta

Keir Wotherspoon

Keir Wotherspoon has returned to the Waitangi Tribunal Unit after almost a decade working at universities internationally. Last year, he took up the role of Senior Researcher/Analyst in the Research Team. The team is responsible for delivering commissioned reports and coordinating the Tribunal's research programme.

Keir started at the unit as a contractor in the mid-2000s, contributing gap-filling research and assistance with Tribunal report writing. During this time, he worked on district inquiries, including Te Urewera, Te Tau Ihu, and Central North Island. That experience and the mentoring he received from the unit's staff and Tribunal members was formative in his development as a historian, and showed him what historical research could achieve in a dynamic and collaborative environment.

After leaving the Treaty sector, Keir forged a career as an academic researcher and educator. In 2017, he received a PhD from the University of Melbourne. In the last decade, he has held research and teaching positions in Australia and the United Kingdom, most recently at the University of Warwick. 'Supervising Master's students at Warwick, I really had to hone what it was to mentor up-and-coming researchers', he reflected. 'As well as working through the critical and technical aspects of their work, it was great being a part of the process of getting them to work out their own early career trajectory.'

With his return to the unit, Keir is eager to lend his support to a new generation of talent in the Research Team and he has enjoyed collaborating with colleagues on a range of projects. He has worked on the Housing Policy and Services kaupapa inquiry and is preparing a discussion paper assessing the existing research base and additional research needs for the inquiry. He is currently mentoring on the summer internship programme and leading staff work on the Housing inquiry. ❐

Senior Researcher/Analyst Keir Wotherspoon

TRIBUNAL NOHO MARAE: *Judiciary and staff from the Waitangi Tribunal Unit at Maraeroa marae in Porirua, 15 October 2019. Staff gathered for a two-day noho marae to focus on whakawhanaungatanga (relationship building and connection) and mahi tahi (collaboration).*

Stage 1 Report on the Health Services and Outcomes Kaupapa Inquiry

In July 2019, the Tribunal released *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry*. This is the first report from the Health Services and Outcomes kaupapa inquiry, an ongoing inquiry into the ways the Crown has responded to health inequities experienced by Māori.

The stage one report focuses on New Zealand's primary health care system, and addresses two claims submitted by leading Māori health professionals associated with Māori-controlled primary health organisations and health providers across the country. These included the National Hauora Coalition, Ngā Mataapuna Oranga, Te Kōhao Health, and Raukura Hauora o Tainui.

Claimants brought allegations concerning the ways the primary health care system in New Zealand has been legislated, administered, funded and held to account by the Crown since the passing of the New Zealand Public Health and Disability Act 2000. The

Act laid out a new structure for the health care system, centred on the creation of district health boards to deliver health care to distinct populations. A new, primary care-focused health system that would deliver care to those who most needed it was declared to be the emphasis of these reforms. Primary health care, often the first port of call for people needing to use health services, was highlighted as key to an effective health system, and ideally should prevent or mitigate the worst effects of health conditions before they need more serious treatment. While the factors that impact people's health are complex and sometimes outside the remit of the health sector, these reforms, it was hoped, would improve cross-sector co-operation and make the health care system much more responsive to the needs of different populations, especially Māori and other population groups who experience worse health outcomes than the majority population.

The Tribunal heard evidence that Māori saw great potential in the reforms to primary health care introduced by the Act and the new Primary Health Care Strategy, released in 2001, and were optimistic that the reforms would improve Māori health outcomes. The reforms introduced new statutory and strategic commitments to Māori health, and created primary health organisations, or PHOs, to coordinate delivery of primary health care services. Māori saw PHOs as an opportunity to exercise tino rangatiratanga guaranteed under the Treaty, by controlling the design and delivery of primary health care for their communities.

However, the Tribunal concluded that despite the reforms, the Crown has failed to do enough in the area of primary care to make sure the promises of the reforms were realised for Māori. All parties in the stage one inquiry, including the Crown, acknowledged that the situation has not substantially improved since 2000: Māori continue to experience the worst health outcomes of any population group in New Zealand. The Tribunal found that the reforms ushered in by the Act in 2000 failed to consistently state a commitment to achieving equity of health outcomes for Māori.

"The Tribunal found serious Treaty breaches in the way the Crown holds the primary health care sector to account and reports on its performance, finding that few mechanisms were in place to ensure accountability and that those mechanisms that did exist were rarely used in relation to Māori health. "

The stage one report concluded that the Crown has failed to properly fund the primary health care sector to pursue equitable health outcomes for Māori. In particular, the Crown does not adequately target funding where it is needed most and fails to ensure that funds earmarked for Māori health issues are used for that purpose.

The Tribunal found serious Treaty breaches in the way the Crown holds the primary health care sector to account and reports on its performance, finding that few mechanisms were in place to ensure accountability and that those mechanisms that did exist were rarely used in relation to Māori health.

The Tribunal further found that the Crown fails to ensure that Māori have adequate decision-making authority and influence when it comes to the design and delivery of primary health care services. It found that the Act's provision for Māori representatives on district health boards does not fully reflect the principle of partnership, and that no other Treaty-consistent partnership arrangements exist at the district health board level. The Crown fails to properly resource and support Māori-controlled PHOs and health providers to deliver quality health care to Māori communities, in breach of Treaty principles.

The Tribunal therefore recommended that the Act and its associated policies and strategies be amended to:

- give effect to Treaty principles and ensure that those principles are part of what guides the primary health care sector; and
- include an objective for the health sector to achieve equitable health outcomes for Māori.

The Tribunal made an interim recommendation that the Crown and the stage one claimants work together to further assess the extent of the problems in primary health care and co-design a set of solutions. The claimants suggested creating a national Māori-controlled agency, organisation or collective that would have substantial oversight and control of Māori health-related spending and policy. The Tribunal has suggested that these proposals be the starting point for the conversations between the Crown and the parties.

The Tribunal directed the Crown and the claimants to inform the Tribunal of the progress of these discussions by 20 January 2020. The Tribunal has reserved the right to issue further recommendations in light of the responses from parties. The Tribunal understands that some talks between parties have begun, and the outcome of this process will be covered in a future issue of *Te Manutukutuku*.

The Health Services and Outcomes Kaupapa Inquiry panel comprises Judge Stephen Clark, Dr Angela Ballara, Associate Professor Tom Roa, Tania Simpson, and Professor Linda Tuhiwai Smith. ❐

Stage 2 Report on the National Freshwater and Geothermal Claims

Tribunal members and staff at the second stage 2 hearing, Ohope Marae, June 2017.

On 26 August 2019, the Tribunal issued a pre-publication version of its stage 2 report in the National Freshwater and Geothermal inquiry. Chief Judge Wilson Isaac presided in this inquiry, with Professor Pou Temara, Dr Grant Phillipson, Dr Robyn Anderson and Ron Crosby as panel members. The first stage was completed in 2012, when the Tribunal reported on the sale of shares in state-owned power companies, in response to an urgent claim from the New Zealand Māori Council. Since 2012, the inquiry was adjourned for a period while the Crown and the Freshwater Iwi Leaders Group worked on the co-design of freshwater management reforms.

The hearings were held in 2016–2018, with the final legal submissions filed in March and April 2019. The Tribunal heard evidence and submissions from the claimants, the Iwi Leaders Group, a number of Māori interested parties supporting the claims, and the Ministry for the Environment.

In 2003, the Crown embarked on a series of reforms under the heading 'Sustainable Water Programme of Action'. The new National-led Government took over and expanded these reforms from 2009 onwards. A series of options and proposals were developed as part of the 'Fresh Start for Fresh Water' programme, followed by the 'Next Steps for Fresh Water' (2016) and 'Clean Water' proposals (2017). The stage 2 inquiry focused on the freshwater management reforms between 2009 and 2017, and the Crown's provision for Māori rights and interests in fresh water in those reforms. It considered two issue questions:

1. is the current law in respect of fresh water and freshwater bodies consistent with the principles of the Treaty of Waitangi? and
2. is the Crown's freshwater reform package, including completed reforms, proposed reforms, and reform options, consistent with the principles of the Treaty of Waitangi?

During the hearings, the Crown and claimants agreed that 'Māori rights and interests in fresh water need to be addressed, that Māori values have not been reflected in freshwater decision-making, that Māori participation in freshwater management and decision-making needs to be enhanced, that the problem of under-resourcing for [Māori] participation needs to be tackled, and that Māori rights in fresh water have an economic dimension'. The Tribunal noted that these were important points of agreement, and enabled the Crown and Iwi Leaders Group to work together collaboratively in the design of some of the freshwater reforms. The Tribunal also noted the evidence of the Deputy Prime Minister, Bill English, to the Supreme Court in 2012. He advised the court that Crown recognition of Māori rights in freshwater resources must 'involve mechanisms that relate to the on-going use of those resources, and may include decision-making roles in relation to care, protection, use, access and allocation, and/or charges or rentals for use'. But the Crown's position in the stage 2 inquiry continued to be (as it was in 2012) that 'no one owns water'.

In agreement with earlier Tribunal reports, the Tribunal found that the Resource Management Act (RMA) does not provide sufficient recognition of Māori rights or protection of their interests. The result is that Māori interests have often been balanced away in freshwater decision-making. The transfer of authority to iwi or the establishment of joint management agreements is allowed under the Act. These mechanisms have hardly ever been used, however, due to statutory and practical barriers to their implementation. Nor does the RMA

provide for Māori proprietary rights in their customary water bodies (such as tribal lakes or rivers), as found to still exist in residual form (at stage 1). Past barriers, including some created by the Crown, have unfairly prevented Māori from accessing water under the RMA's first-in, first-served system for granting water permits. For these and other reasons, the Tribunal found that the RMA and its allocation regime are in breach of Treaty principles.

The Tribunal's stage 2 report covered both RMA and policy reforms between 2009 and 2017. A national policy statement on freshwater management was introduced in 2011, followed by revised versions in 2014 and 2017. The national policy statement requires councils to meet certain water quality and quantity standards and objectives by 2030-2040, including making 90 per cent of waterways safer for full immersion by 2040 (see map on page 9). Many claimant examples of degraded freshwater taonga were presented to the Tribunal during the stage 2 hearings. These included Lake Ōmāpere in Northland, where algal blooms turned 'a lake once brimming with life' to a 'pungent, frothy mess' in 2018. The Tribunal's report also covered Lake Horowhenua, the Manawatū River, the Waipaoa River, the Tarawera River, and several others.

The Tribunal found that the Crown's efforts to recognise and provide for Māori rights and interests in the reforms have had two major results: the insertion of 'Te Mana o te Wai' in the national policy statement as an overriding concept that the health of a water body must come first in freshwater management; and the insertion of the 'Mana Whakahono a Rohe' mechanism in the RMA to ensure that councils and iwi establish a sound working relationship in resource management.

The Tribunal found that these reforms, while important first steps, did not go far enough to address Māori rights and interests or to resolve the growing crisis in freshwater quality.

First, the Tribunal recommended some amendments to the principles that govern how decisions are made under the RMA (Part 2 of that Act). The panel found that section 8 of the RMA, which requires decision-makers to 'take into account the principles of the Treaty of Waitangi', was weak and ineffective given the higher weighting for other matters in the RMA. The Tribunal recommended that section 8 should be amended to state that 'the duties imposed on the Crown in terms of the principles of the Treaty of Waitangi are imposed on all those persons exercising powers and functions under the Act'.

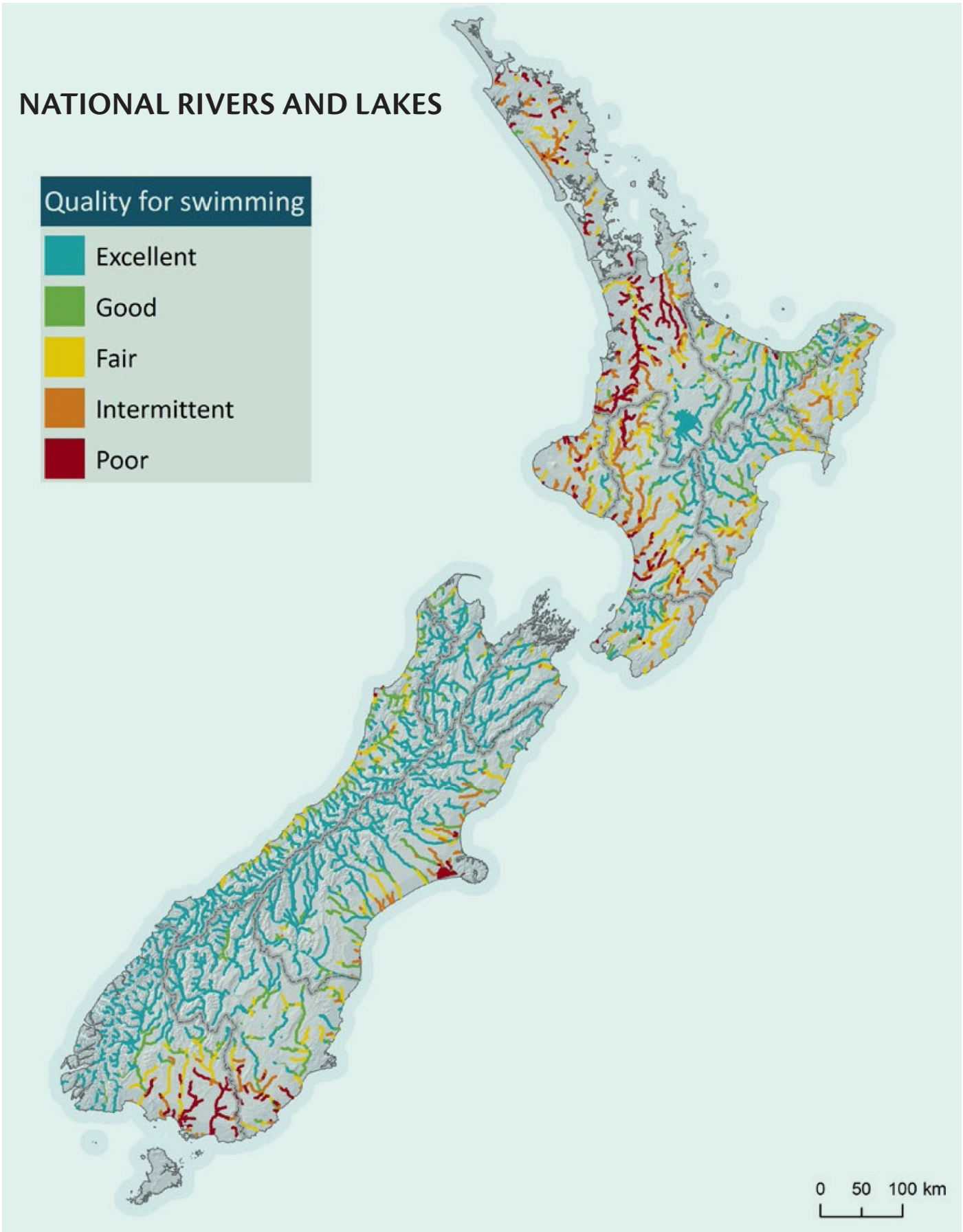
Secondly, the Tribunal found that the 'Mana Whakahono a Rohe' mechanism was very limited and did not provide effectively for the co-governance already available in theory under the RMA since 1991 (transfers of power) and 2005 (joint management agreements). The Tribunal recommended that the Crown should remove the barriers to these existing co-governance measures in the RMA, and should establish a national co-governance body with Māori. It also recommended that co-governance agreements should be provided for in all Treaty settlements and not only some settlements (as at present).

Thirdly, the Tribunal recommended that the Crown take long-promised steps to ensure that Māori are properly resourced to participate effectively in RMA processes. One of the agreed goals of the Crown's reform programme was the building of 'capacity and capability among iwi/hapū, including resources', but the Tribunal found that the only result was a training programme on Mana Whakahono a Rohe agreements. The Tribunal noted that 'the Crown's stated objective to enhance Māori participation in freshwater management and decision-making will not be achieved unless an answer is found to the problem of under-resourcing'.

Fourthly, the Tribunal found that the Crown's water quality reforms fell well short of what both Crown and claimant scientists agreed was necessary. It recommended amendments to the water quality standards in the national policy statement, the introduction of long-delayed stock exclusion regulations, and the commitment of long-term funding to restore degraded water bodies. It also recommended stronger recognition of Māori values in the national policy statement. Further, the Tribunal considered that the timeframes for councils to implement the national policy statement should be reassessed. This was necessary to 'ensure that water bodies are not further degraded in the meantime'. The report noted that 20 per cent of native freshwater fish species had been threatened with or were at risk of extinction when the RMA was passed in 1991. That figure had risen to 75 per cent. The Tribunal recommended 'urgent action to develop measures for habitat protection and habitat restoration'.

Fifthly, the Tribunal agreed that Crown–Māori co-design of policy options was a Treaty-compliant process, and recommended that it become a regular feature of Crown policy-making where Māori interests were concerned.

Finally, the Tribunal found that the Crown's water allocation reforms had experienced long delays, and that the Crown's parameters for a new allocation regime would exclude proper recognition of Māori proprietary rights. What was necessary, the Tribunal found, was for the Crown to reconcile Māori and non-Māori rights and interests. This could be done, the Tribunal recommended, by ensuring that any new allocation regime included regional allocations for iwi, for Māori land, and for cultural purposes. ❐



Source: Ministry for the Environment, *Clean Water: 90% of rivers and lakes swimmable by 2040*, 2017.

This map illustrates the quality of New Zealand's waterways for swimming in 2017.

Māori Prisoners' Voting Rights

On 12 August 2019, the Waitangi Tribunal released the prepublication version of *He Aha i Pērā Ai? The Māori Prisoners' Voting Report.* The report addresses three claims that seek the repeal of section 80(1)(d) of the Electoral Act 1993. This section of the Act was amended in 2010 to exclude sentenced prisoners, including Māori prisoners, from registering as an elector. The amendment extended an existing voting ban on prisoners serving a sentence of three years or more to all prisoners serving sentences of imprisonment at the time of a general election. The Tribunal found that the amendment breached the principles of the Treaty because it disproportionately affected Māori prisoners. Māori are significantly more likely to be incarcerated than non-Māori for short periods of time and for less serious forms of offending.

The Crown accepted that the enactment of this section of the Electoral Act 1993 has had a significantly disproportionate impact on Māori, which is illustrated in the chart below.

The chart reveals the disproportionate impact of the legislation on Māori. From a Māori to non-Māori ratio in 2010 of 2.1 per 100,000 population over the age of 18 likely to have been removed from the electoral roll, in 2011 the ratio jumped to 9.3. Despite a downward trend in the number of prisoners being removed from the roll each year, the ratio of Māori to non-Māori increased further, reaching 11.4 in 2018.

The Tribunal found that the Crown had failed in its duty to actively protect the right of Māori to participate equitably in the electoral process and exercise their tino rangatiratanga individually and collectively.

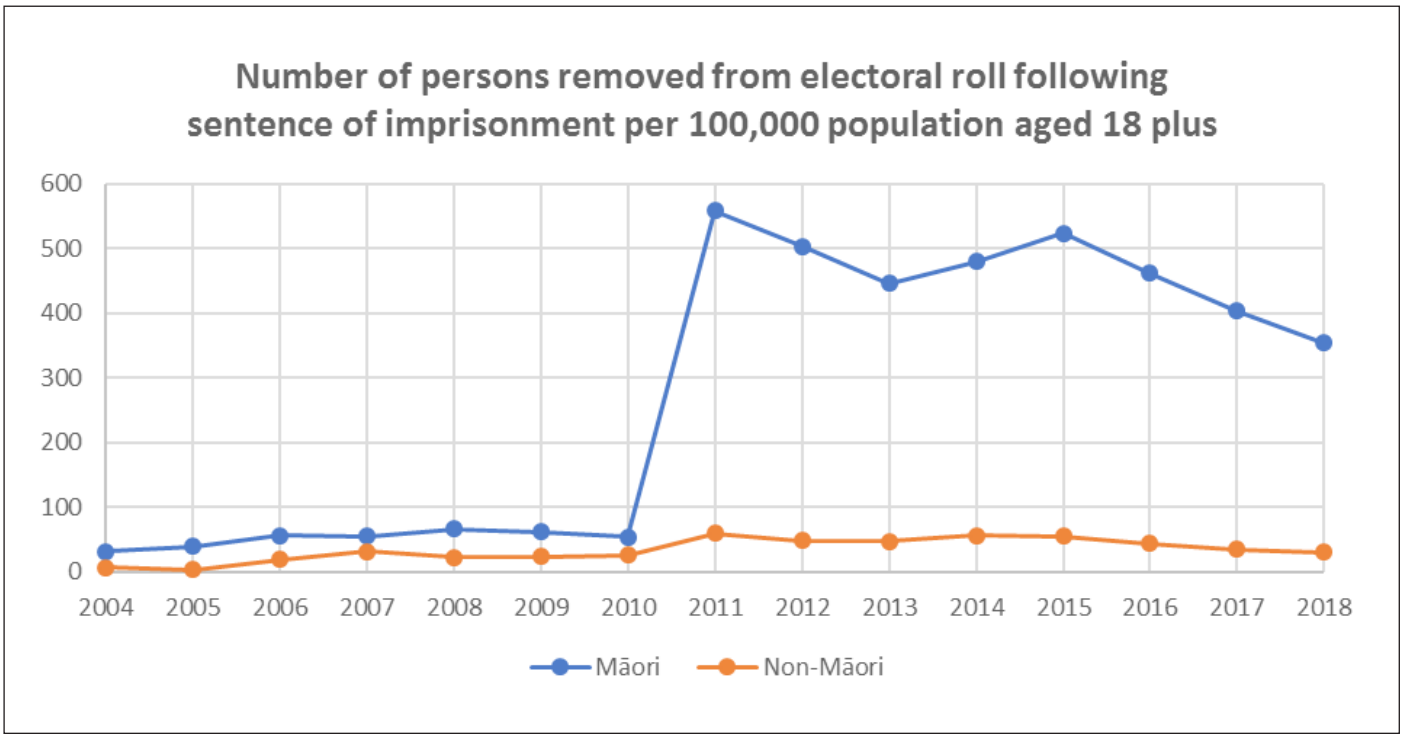
The Tribunal also found that disenfranchising Māori prisoners has continued to impact on individuals following their release from prison and that the impact extends to their whānau and communities. By failing to take sufficient action to enable and encourage released prisoners to re-enrol, the Crown has further breached its duty of active protection.

The Tribunal recommended that the legislation be amended urgently to remove the disqualification of all prisoners from voting, irrespective of their sentence.

It also recommended that the Crown start a process to enable and encourage all sentenced prisoners and all released prisoners to be enrolled in time for the next general election in 2020.

On 23 November 2019, the Hon Andrew Little, Minister of Justice and Treaty of Waitangi Negotiations, announced that people sentenced to less than three years in prison would have their voting rights restored.

These claims were heard under urgency in May 2019. The panel hearing the claims was Judge Patrick Savage (presiding officer), Kim Ngarimu, and Ron Crosby. ❐



Tribunal Site Visit to Kāpiti Island

The above restored 'trypot' at Rangatira on Kāpiti Island was once used to render whale blubber. At the industry's height, over 2,000 people were employed by one of Kāpiti Island's five whaling stations.

On 26 April 2019, the Porirua ki Manawatū Tribunal made a site visit to Kāpiti Island as part of the Te Ātiawa/Ngāti Awa ki Kāpiti phase of its inquiry. Representatives and staff from Ngāti Toa, Te Ātiawa/Ngāti Awa ki Kāpiti, Crown counsel, the Department of Conservation (DoC) and Te Arawhiti/Office for Māori Crown Relations were also present. The overnight site visit related to the claims concerning the island from members of Te Ātiawa/Ngāti Awa ki Kāpiti. The claimants broadly allege prejudice resulting from several statutes, including the Kapiti Island Public Reserve Act 1897, as well as subsequent legislation and policies, that facilitated the alienation of Māori-owned land.

Like the two sea currents that converge at Kāpiti, opening *kōrero* focused on the various heke of iwi from Tainui and Taranaki commencing in circa 1816-1820 and the subsequent taking of Kāpiti Island. As the boat moved towards Kāpiti, three islands appeared. On 4 June 1840, Te Rangihiroa and Te Ohu signed the Treaty of Waitangi on behalf of Ngāti Toa and Te Ātiawa/Ngāti Awa ki Kāpiti on one of these islands, Motungarara. Motungarara is also the resting place of George Stubbs, a European whaler and the father of rangatira Wiremu (Wi) Te Kakakura Parata. Motungarara and Tokomaru are privately owned and occupied by whānau connected to the Māori-owned blocks on Kāpiti. The third island, Tahoramaurea, is unoccupied.

The boat then travelled parallel to the island until arriving at Taepiro. This was Te Rauparaha's principal pā on Kāpiti. Situated on a high plateau, the pā site was bounded either side by almost vertical cliffs. The rugged topography embodied claimant descriptions of Kāpiti as a place of refuge for the iwi. A whare, Te Umu ki Ohau, once stood at Taepiro in commemoration of Te Rauparaha's daughter, who was killed in Horowhenua.

The boat continued to Rangatira, the site of a DoC information area. A restored 'trypot', once used to render whale blubber into oil for overseas markets, illustrated the later European influence on the island (see photo). Rangatira was one of five whaling stations situated on Kāpiti before the industry declined in the 1840s. Kōrero at Rangatira focused on the complexities of inter-iwi interests on Kāpiti. Representatives of the claimants acknowledged the importance of Ngāti Toa and their settlement, while emphasising that they too had kaitiaki obligations.

Waiorua, at the north-eastern edge of Kāpiti, was the final area visited by the Tribunal. Here, in circa 1822, a group of 300 to 500 Ngāti Toa and Te Ātiawa/Ngāti Awa ki Kāpiti warriors defeated a larger canoe fleet of the original tribes from the area. From that date, the island was held to have been secured. Waiorua remained the centre of the island for the ancestors of the Te Ātiawa/Ngāti Awa claimants. The Treaty of Waitangi was also signed here on 14 May 1840 by several rangatira, including Te Rauparaha.

The Tribunal passed a small urupā where Te Rangihiroa, Wi Parata's maternal grandfather, received a Christian burial. Te Rangihiroa was born and raised in Kāwhia and participated in the migrations south before reaching his final resting place on Kāpiti. The role of DoC was discussed with respect to the Māori-owned land blocks on this side of the island and the regulatory regime that restricts activities such as agri-business. It was noted that tourism provides some economic return on Kāpiti. Members of the claimant community operate a lodge and eco-tourism business here.

Te Ātiawa/Ngāti Awa ki Kāpiti claimants expressed a hope that the site visit would illuminate the nature of the relationship they were endeavouring to maintain with Kāpiti. The Tribunal was told this relationship was defined by their role as kaitiaki. Members of the Tribunal were also able to see the sites that underpin the history associated with the claimants and the reverence they have for Kāpiti Island's unique ecosystem, despite historical and contemporary challenges.

Sarawak Delegation Visits the Tribunal

Māori Land Court judges and senior Waitangi Tribunal staff with a delegation of ministers and senior officials of the state government of Sarawak, 15 July 2019.

On 15 July 2019 Māori Land Court judges and senior Waitangi Tribunal staff met at the Tribunal's offices with a delegation of ministers and senior officials of the state government of Sarawak.

Sarawak is a state of Malaysia located on Borneo Island. Some 46 per cent of its population are indigenous peoples, and much of its land is still held in customary indigenous title. At present, title to indigenous lands in Sarawak is issued by the government where claimants can demonstrate occupation of the land as at 1958, and the Native Courts have no jurisdiction to consider indigenous land issues. The visiting delegation, comprising the Native Court Steering Committee of the Sarawak Government, sought to gain an understanding of the current processes and history of dealing with native land rights and issues in Aotearoa New Zealand, as part of an investigation into whether the Sarawak Native Courts should take a role in dealing with indigenous title issues.

Deputy Chief Judge Fox, Deputy Chairperson Judge Savage and Judge Wainwright met with the delegation on the morning of their visit, along with Tribunal Director Renee Smith and Māori Land Court Chief Registrar Taiawhio Waititi. They gave a presentation detailing the work of the Waitangi Tribunal and Māori Land Court in addressing both historical and contemporary Māori land rights issues, including the current legal framework for recognising and enforcing Māori land rights. The delegation shared information about the current issues with recognition of indigenous land rights in Sarawak and discussed how the approaches of the Tribunal and Māori Land Court to indigenous rights might be applied by their government.

The Waitangi Tribunal Unit Director, Chief Historian, Registrar and managers spoke to the delegation and answered their questions about the work of the Unit, including the provision of claims registration and legal advice, research and inquiry facilitation services and report writing assistance for Tribunal panels.

Following their day at the Tribunal offices, the Sarawak delegation went on to visit Māori Land Court district offices in Waiariki and Tairāwhiti to gain further insights into current approaches to Māori land management and development. ❐

VISIT THE TRIBUNAL ONLINE

For the very latest information on claims, hearings, and reports, visit the Waitangi Tribunal's website:
www.waitangitribunal.govt.nz