

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

Tākiri te haeata, ka ao, ka awatea, horahia mai ko te ao mārama



THE STRATEGIC DIRECTION IN 2020

THE STRATEGIC DIRECTION IN 2020

The Waitangi Tribunal's Strategic Goals Updated

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

WAITANGI TRIBUNAL



The Waitangi Tribunal's *Strategic Direction 2014–2025* is available at www.waitangitribunal.govt.nz/publications-and-resources/waitangi-tribunal-directions. Further information on Tribunal reports and inquiry progress is published twice yearly in the Tribunal's magazine *Te Manutukutuku*. Current and back copies are available at www.waitangitribunal.govt.nz/publications-and-resources/te-manutukutuku.

ISBN 978-0-908810-97-0

www.waitangitribunal.govt.nz

Produced and typeset by the Waitangi Tribunal

Published 2021 by the Waitangi Tribunal, Wellington, New Zealand

Printed by The Big Picture, Wellington, New Zealand

Set in Adobe Cronos Pro Opticals, Hypatia Sans Pro,
and Minion Pro Opticals



CONTENTS

From the chairperson	iv
From the director	v
Updating the strategic direction	1
The strategic direction in 2014	2
An inclusive approach	2
The strategic goals	2
Priority settings	3
Progress to date: the 2020 goals.	3
Strategic goal 1: district inquiries and remaining historical claims.	3
Strategic goal 2: high-priority kaupapa inquiries	3
Strategic goal 5: urgent inquiries.	6
Overall	6
Our experience in perspective	7
The road ahead	7
District inquiries and historical claims	7
Kaupapa inquiries and contemporary claims	7
Remaining historical and contemporary claims.	8
Urgent inquiries and remedies proceedings	8
The strategic direction revised	8
A gradual transition	8
The strategic goals updated	9
Priority settings adjusted	9
Our vision reaffirmed	9
Current status of Tribunal inquiries under way.	10

FROM THE CHAIRPERSON

Six years ago, on 2 July 2014, I announced the Waitangi Tribunal's strategic direction for the period 2014 to 2025. As we reach our halfway point, it is timely to take stock of progress to date and to review our priorities and objectives. The challenge for the Tribunal is, as I indicated in 2014, to provide an independent, impartial, public, and accessible forum in which Māori Treaty claims can be heard and reported on in a timely manner. Our 2014 strategic direction outlined new inquiry pathways to address this challenge.

Much has been achieved since 2014. All the district inquiries then under way have been completed, are writing their reports, or are in their final hearings. Five kaupapa (thematic) inquiries have commenced and progressed, as has a process for addressing remaining historical claims that have fallen outside the district inquiries. Alongside the regular inquiries, a number of urgent inquiries have been held, including binding remedies proceedings in three inquiry districts.

The Tribunal's expanded work programme is well under way. It has two central pillars. One is the final district inquiries, which will between them report on many hundreds of mainly historical claims. The other is the kaupapa inquiries, which focus on issues of national significance affecting Māori as a whole. Completing these two inquiry programmes will enable the Tribunal to hear and report on the majority of claims and to fulfil the core objective as stated in 2014, which is to advance a Treaty-based Crown-Māori relationship and thereby sustain the political, social, and cultural fabric of Aotearoa/New Zealand.



A handwritten signature in black ink, appearing to read 'Wilson Isaac'.

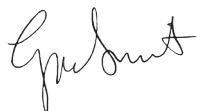
Chief Judge Wilson Isaac
Chairperson of the Waitangi Tribunal

FROM THE DIRECTOR

The Tribunal's strategic direction, published in 2014, has reached its half-way point. Its strategic goals set ambitious targets of progress and change. Achieving them, as the Tribunal recognised at the time, would require a sustained, large-scale and diversified work programme as the Tribunal transitioned from district inquiries concerned mainly with historical claims towards kaupapa (thematic) inquiries with a stronger focus on contemporary issues. For our part, the Waitangi Tribunal Unit and the Ministry of Justice would need to mobilise substantial resources and develop new ways of working to provide effective support for the programme as it evolved. We signalled then that we were – and are – up for the challenge.

The past six years have been a period of active adaptation and change. Strengthening the unit's organisational flexibility and agility has been central to its ability to respond rapidly and effectively to the demands of new inquiry processes and the aspirations of claimants and stakeholders. To that end, we reorganised the unit's teams with a focus on core staff capabilities, a diversified skill set, and technical leadership. We have improved our ability to match resources to emerging needs, thereby delivering effective support to both established and new forms of inquiry, in particular the issues prioritised for rapid action. Looking ahead, we are well positioned to support the Tribunal's updated strategic goals focusing on completion of the final district inquiries and the development of the kaupapa inquiry programme.

Kia ora rā



Grace Smit
Director of the Waitangi Tribunal Unit





Professor Pou Temara and the late Judge David Ambler, presiding officer for the Te Rohe Pōtae (King Country) district inquiry, on a site visit at Kāwhia Harbour during the third hearing from 4 to 8 March 2013.

UPDATING THE STRATEGIC DIRECTION

The July 2014 Waitangi Tribunal strategic plan, published as the *Strategic Direction, 2014–2025*, outlined a comprehensive approach for inquiring into Treaty claims not yet heard or settled. It set five strategic goals to be achieved over a 12-year period, two of which, focusing mainly on historical claims, were targeted for completion by 2020.

As we reach the mid-point in the strategy's implementation, this is an appropriate moment to review the progress made to date and outline what remains to be done. Drawing on the lessons of experience over the first six years, we take the opportunity to recalibrate the Tribunal's strategic direction and update its strategic goals.



The Paparahi o te Raki inquiry panel sitting at the twenty-sixth and final hearing at Waitangi in October 2017. From left: Dr Robyn Anderson, Dr Ann Parsonson, Judge Craig Coxhead, and Kihi Ngatai.

MISSION

The Waitangi Tribunal's mission is to uphold the principles of the Treaty/Te Tiriti. It does so by serving as the primary forum for hearing and reporting on Māori claims against the Crown alleging breaches of the Treaty, offering a 'truth and reconciliation' process and impartial findings on claims. It contributes to the durable and fair resolution of Treaty claims and to restoring and upholding the Treaty partnership between Māori and the Crown. In so doing, the Tribunal aims to advance the well-being of the Crown-Māori relationship and to sustain the political, social, and cultural fabric of Aotearoa/New Zealand.

THE STRATEGIC DIRECTION IN 2014

An inclusive approach

In 2014, the Tribunal's effort was concentrated on its district inquiry programme, which had completed 18 districts and was then progressing what were expected to be its final six district inquiries, covering 11 districts. These district inquiries included both historical and contemporary claims (contemporary claims are defined by law as those arising on or after 21 September 1992). The desire to bring closure to historical claims was, the Tribunal recognised, a shared priority for both Māori and the Crown.

The Tribunal also acknowledged, however, that, with the exception of the few granted urgency, many registered claims yet to be heard or settled lay outside the scope of the district inquiries. Some had been submitted years ago, many just before the statutory deadline of 1 September 2008 for submitting new historical claims, as well as more recent contemporary claims. They included generic claims about issues of a national scale. With a few exceptions, these claims had so far had no access to a Tribunal hearing, nor a prospect of one until some unspecified future time. This was due to the Tribunal's decision back in the 1990s to prioritise historical claims that could be grouped in a district for joint hearing.

In addition to the backlog of generic and contemporary claims, there were also some historical claims relating to a district that had been filed after

the cut-off date for the relevant district inquiry (no more were filed after 2008). Other claims related to a district that had not seen a district inquiry (usually due to settlement negotiations).

The Tribunal decided that a comprehensive approach was needed that provided access to all claimants who wished to have their claims heard. Accordingly, the reach of its work programme was expanded from a focus on district inquiries to provide three new inquiry pathways:

- ▶ for claims that raised or related to nationally significant issues affecting Māori as a whole in similar ways, covering both historical and contemporary claims;
- ▶ for other historical claims that had not been settled, had not been heard in the relevant district, and which the claimants still wanted to bring before the Tribunal; and
- ▶ for addressing the backlog of specific or local contemporary claims.

The strategic goals

The strategic direction was envisaged as both transitional and transformative. Success would enable the Tribunal to address most claims awaiting a hearing, moving it towards hearing new contemporary claims as they were filed and thus providing more

'HISTORICAL' AND 'CONTEMPORARY' CLAIMS

The Crown defines 'historical' Treaty grievances as those having arisen before 21 September 1992 and 'contemporary' grievances as those having arisen on or after that date. Many claims allege both historical and contemporary grievances. Since the statutory deadline of 1 September 2008 for filing new historical claims, the Tribunal's registry has been open only to new contemporary claims.

timely access to justice. To achieve this objective, the Tribunal set five strategic goals:

- SG1** Complete the final district inquiries and remaining historical claims by 2020.
- SG2** Progress high-priority kaupapa claims by 2020, including those likely to be included in historical Treaty settlements.
- SG3** Substantially advance or complete the remaining kaupapa claims by 2025.
- SG4** Address remaining contemporary claims.
- SG5** Address claims granted urgency, in particular those arising from the Treaty settlement process.

Priority settings

The Tribunal recognised that long-term inquiry planning and resource balancing would require a general framework of priority settings. In ranking order, they were:

- claims granted urgency, which include urgent remedies proceedings;
- historical claims, which are mostly covered in district inquiries but are also in kaupapa inquiries;
- contemporary claims relating to kaupapa issues of national significance; and
- the backlog of contemporary claims.

PROGRESS TO DATE: THE 2020 GOALS

Strategic goal 1: district inquiries and remaining historical claims

Our expectation in 2014 was that all six district inquiries then under way would finish by 2020, which would mark the end of the district inquiry programme. Te Urewera (Wai 894) and Whanganui Land (Wai 903) completed the release of their reports in 2015 and 2017 respectively and Te Rohe Pōtae (Wai 898) released the final part of its report in December 2020. The other three are still under way, but well advanced. Te Paparahi o Te Raki (Wai 1040) has completed all hearings and is preparing its report, while Taihape (Wai 2180) and Porirua ki Manawatū (Wai 2200) are in their final hearing rounds. All are expected to finish by 2025.

We did not, however, anticipate the start of two new district inquiries in 2019. One is North-Eastern Bay of Plenty (Wai 1750), where settlement negotiations in the 1990s had not concluded. This inquiry is expected to finish its hearings and be preparing its report by 2025. The other is Muriwhenua Land

(Wai 45), where applications for binding remedies have required further hearing of historical claims. The Muriwhenua Tribunal is expected to report its findings before recommencing its consideration of the applications by 2025.

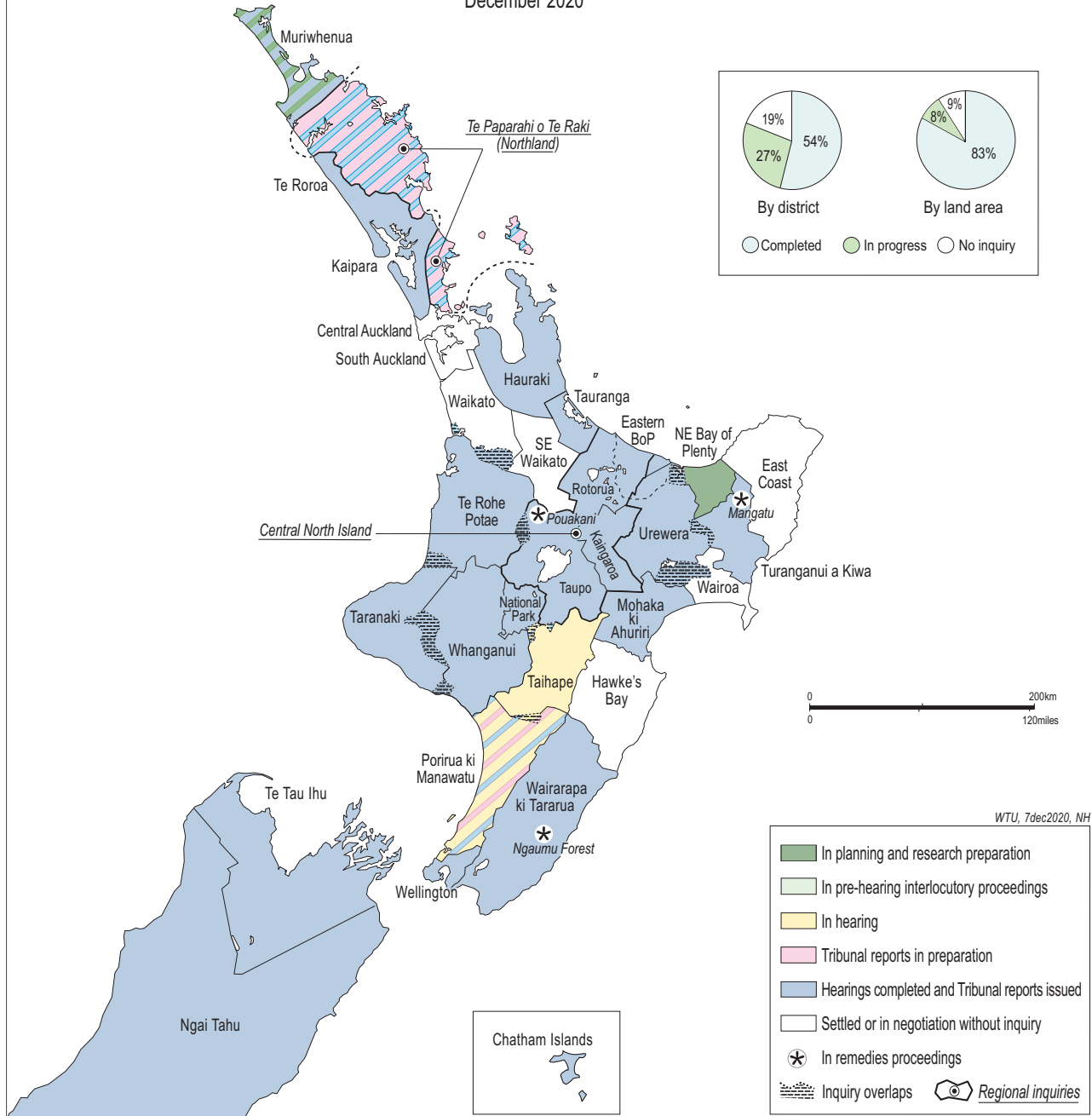
For the historical claims in a district that were filed too late to be heard, a standing panel process has begun and is at an early stage. The panel for the claims in the first region, comprising the south-western North Island, the South Island and the Chatham Islands, has started to clarify whether claims have already been settled or reported upon in a district inquiry and which unsettled claims (that are not in negotiation) the claimants want the Tribunal to consider.

Strategic goal 2: high-priority kaupapa inquiries

The first kaupapa inquiry, into the claims of Māori Military Veterans, commenced within months of the launch of the strategic direction and has a strong

Progress in Tribunal District Inquiries

December 2020





The Health Services and Outcomes inquiry panel in hearing at Turangawaewae Marae, 15–19 October 2018. From left: Tania Simpson, Judge Stephen Clark, Dr Tom Roa, and Dr Angela Ballara.

historical dimension. It is about to enter its final round of hearings. The next four of the 13 currently listed kaupapa inquiries, ranked in order of priority, have since commenced. The Health Services and Outcomes (Wai 2575) and the Marine and Coastal Area (Takutai Moana) Act (Wai 2660) inquiries have already reported on contemporary issues that were prioritised for early hearing. Mana Wāhine (Wai 2700) and Housing Policy and Services (Wai 2750) are in their preparatory stages.

Two inquiries that started under urgency have since become kaupapa inquiries in all but name. The

National Freshwater and Geothermal Resources (Wai 2358) inquiry has reported on contemporary freshwater issues, while the Trans-Pacific Partnership Agreement (Wai 2522) inquiry is hearing a set of outstanding non-urgent issues.

As it has progressed, the kaupapa inquiry programme has developed substance and momentum. As a new and developing programme, it has evolved in ways that were not expected when the strategic direction was prepared in 2014. Notably:

- Some issues which would have been part of a later, broader inquiry have been prioritised

for early hearing (such as the Marine and Coastal Area (Takutai Moana) Act inquiry), which has become a new inquiry pathway for claimants to pursue.

- In all inquiries except one, most claimants have given priority to their contemporary claim issues, in particular current pressing issues for early hearing and reporting.

This has required flexible processes and some phasing within inquiries. Most of the inquiries under way are expected to finish by 2025.

Strategic goal 5: urgent inquiries

The Tribunal has released no fewer than 12 reports since July 2014 on claims granted urgency and two more are currently under way. Half the inquiries concerned challenges to Crown processes for negotiating historical Treaty settlements. This was anticipated in 2014, but the overall number of urgent inquiries and the high volume of applications for urgency exceeded expectations. Less expected was the sharp decline after 2017 in settlement-related applications alongside a growing focus on current social and economic issues of concern.

In addition, long-running urgent remedies proceedings continued throughout the period, with long delays as a result of judicial reviews in the courts. They concern applications for binding remedies from claimants whose historical claims have been reported as well-founded in district inquiries. Three remedies inquiries are currently under way.

Overall

The district inquiries that have been progressed since 2014 have made slower but steady progress. Between them, they account for more than a third of all registered claims. The kaupapa inquiry programme has



The Taihape Tribunal makes a site visit to Opaea Church and urupā, north of Taihape, during the sixth hearing of its district inquiry, held in April 2018.

gathered pace, with seven inquiries currently under way and a strong focus on contemporary Crown policy and action and on targeting high priority issues for early consideration. Urgent inquiries have been numerous. Overall, the number of Tribunal inquiries currently under way has more than doubled since 2014.

OUR EXPERIENCE IN PERSPECTIVE

The Tribunal's experience in implementing the first part of its strategic direction suggests some key constraints and opportunities that are likely to influence future progress. The following four are amongst them.

First, developments in the first kaupapa inquiries may have ongoing influence. As well as existing claims, many new claimants have sought to participate. This has sharpened a focus on contemporary issues and has built up larger and longer inquiry processes, often organised into issue-based stages. It has also assisted more comprehensive investigation of the main issues set down for inquiry.

Secondly, historical Treaty settlements in negotiation have reduced in number and pace since they peaked in 2017. As a result, all district inquiries except one are now aligned with the Crown's engagement with mandated groups in their districts.

The exception is North-Eastern Bay of Plenty, where settlement negotiations are proceeding in parallel with the preparation of the inquiry for hearing.

Thirdly, many historical claims not heard in other Tribunal inquiries have been included in Treaty settlements and ongoing negotiations with the Crown. This has reduced the number likely to require further Tribunal consideration by the standing panel.

Fourthly, in several current kaupapa inquiries, a number of claimants have been saying that a lack of resources has restricted their ability to prepare their evidence and participate in the proceedings, limiting their access to justice. They say that they cannot rely on the kind of support provided by the Crown Forestry Rental Trust to claimants in the district inquiries. This constraint may slow progress in kaupapa inquiries.

THE ROAD AHEAD

District inquiries and historical claims

Bringing closure to historical claims was first amongst the five strategic challenges outlined in the strategic direction. The Tribunal will add real value to the integrity and durability of historical Treaty settlements through the timely completion of the final district inquiries, in which most of the historical claims of iwi, hapū, and whānau are being heard. All the district inquiries except, possibly, the new North-Eastern Bay of Plenty district, are on track for completion by 2025.

Outside the district inquiries, most kaupapa

inquiries will have a historical dimension to varying degrees. The Tribunal will continue to deal with the issues considered most pressing by the claimants in those inquiries.

Kaupapa inquiries and contemporary claims

It is already clear that most kaupapa inquiries are likely to be larger and longer than originally envisaged. The kaupapa programme has built-in flexibility to adjust. Claimants may:

- raise new issues for inquiry;

- apply for a pressing issue to be severed from a later-scheduled inquiry for a separate and early hearing; or
- request that issues be prioritised in an existing inquiry.

The programme as a whole will nonetheless take longer to complete. Eight of the 13 listed kaupapa inquiries have not yet started. Progress up to 2025 will be limited by the substantial resources required to complete the district inquiries. Beyond 2025, the pace will pick up as kaupapa inquiries take centre stage.

Experience to date suggests that, in most kaupapa inquiries, claimants are likely to prioritise contemporary aspects of the issues to be heard. Substantial numbers of existing and new claims, brought mainly by local groups and individuals rather than national organisations, have sought to participate under the umbrella of the nationally significant issues set down for inquiry. Although enlarging the kaupapa inquiries, their participation

will reduce the number of remaining contemporary claims requiring separate Tribunal attention.

Remaining historical and contemporary claims

The processes for considering remaining historical and contemporary claims will be able to go ahead alongside the district and kaupapa inquiry programmes but cannot be completed until the final inquiries have reported. Their scale may be smaller than originally expected.

Urgent inquiries and remedies proceedings

The Tribunal will continue to provide a priority pathway for claims that meet its high threshold for granting urgency. After the final historical Treaty settlements are made, urgent inquiries are likely to concern Crown policies and actions on matters of contemporary policy and law. In some cases, they may overlap with current or future kaupapa inquiries.

THE STRATEGIC DIRECTION REVISED

A gradual transition

In 2014, we expected that, by the end of the 12-year transitional period or soon after, the Tribunal would be hearing contemporary claims as they were filed, including those granted urgency or assigned to new kaupapa inquiries. This remains the overall objective of the strategic direction, but will begin to take effect earlier and be fulfilled over a longer period.

Kaupapa inquiries provide earlier access to a hearing for small claimant groups whose claims relate to the nationally significant issues set down for inquiry. The alternative for these claimants was to await a separate contemporary claims process or the

completion of the Tribunal's transitional programme. Their participation will lengthen the kaupapa programme but will enable more comprehensive inquiries, reducing the number of claimants likely to seek a later hearing through the contemporary claims process or after the strategic direction has achieved its purpose.

The kaupapa programme also provides flexibility for claimants to apply for already identified kaupapa issues to be prioritised or for new kaupapa issues to be granted a hearing. Claimants who can demonstrate grounds for immediate action may continue to apply for urgent inquiry.

The strategic goals updated

Given the many external factors that influence the demand for a Tribunal inquiry and the pace at which inquiries can be progressed, it would be unrealistic to set a fixed target date for the completion of the strategic direction's transitional programme. We expect nevertheless that the district inquiries will be completed by 2025, with the possible exception of the North-Eastern Bay of Plenty, whereas a number of kaupapa inquiries will continue.

It will be necessary to review the progress and strategy in the lead-up to the end of this strategic direction so as to develop a new plan (if needed) by 2025.

The updated strategic goals are as follows:

- SG1** Complete the final district inquiries by 2025.
- SG2** Complete or advance at least half of the 13 major kaupapa inquiries by 2025.
- SG3** Address remaining historical claims.

SG4 Plan for addressing remaining contemporary claims that fall outside the kaupapa inquiries.

SG5 Address claims granted urgency, including urgent applications for remedies.

Priority settings adjusted

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

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

OUR VISION REAFFIRMED

Our vision, as in 2014, is that the Crown and Māori, reconciled in the spirit of the principles of Te Tiriti o Waitangi/the Treaty of Waitangi, will be empowered to join in creating a better future for all New Zealanders. This vision is expressed in our whakataukī, composed by Tā Hirini Moko Mead:

Transitioning from our past to a new future

*Tākiri te haeata, ka ao, ka awatea,
horahia mai ko te ao mārama*

*Dawn breaks, comes the daylight
and the world is aglow with brilliant light*

FUTURE KAUPAPA INQUIRIES

The Waitangi Tribunal's kaupapa programme includes the following future inquiries:

- constitution, self-government, and electoral system;
- justice system;
- education services and outcomes;
- social services and social development;
- economic development;
- identity and culture;
- natural resources and environmental management; and
- citizenship rights and equality.

CURRENT STATUS OF TRIBUNAL INQUIRIES UNDER WAY

Urgent inquiries

Ngā Hapū o Te Moutere o Motiti (Wai 2521)
Oranga Tamariki (Wai 2915)

The Tribunal has completed its hearings and is writing its report.
In hearing.

Remedies proceedings

Mangatū Remedies (Wai 814 / Wai 1489)

The Tribunal is writing its report on applications for binding recommendations for the return of Crown forest licensed land.

Wairarapa ki Tararua Remedies (Wai 863)

The inquiry into applications for binding recommendations is currently suspended pending the outcome of judicial review proceedings in the High Court.

District inquiries

Muriwhenua Land (Wai 45)

The Tribunal is consulting on an inquiry process for claims not heard in the original inquiry, before considering applications for remedies.

Te Rohe Pōtae (Wai 898)

The Tribunal's report, released in six parts between September 2018 and December 2020, is being prepared for publication.

Te Paparahi o Te Raki (Wai 1040)

The Tribunal has completed its hearings and is writing its report.

Taihape (Wai 2180)

After completing its hearings in early 2021, the Tribunal will release an early report on landlocked Māori land ahead of its main report on the inquiry.

Porirua ki Manawatū (Wai 2200)

The Tribunal is writing its report on Te Ati Awa / Ngāti Awa claims and is hearing Ngāti Raukawa claims and district-wide issues.

North-Eastern Bay of Plenty (Wai 1750)

This new inquiry started in 2019. Consultation on an inquiry process is well advanced and research has commenced.

Kaupapa inquiries

Military Veterans (Wai 2500)

Interlocutory proceedings are under way in preparation for the final round of hearings.

Health Services and Outcomes (Wai 2575)

Following its report on primary healthcare issues, the Tribunal is preparing to hear the claims of Māori with disabilities.

Marine and Coastal Area (Takutai Moana) Act (Wai 2660)

The Tribunal is currently hearing claims concerning the legislation on Māori foreshore and seabed rights.

Housing Policy and Services (Wai 2750)

The Tribunal has prioritised Māori homelessness for early hearing.

Mana Wāhine (Wai 2700)

Contextual tūāpapa hearings are due to commence in early 2021.

Trans-Pacific Partnership Agreement (Wai 2522)

The Tribunal is writing its report on the last remaining inquiry issue, data sovereignty.

Standing panel on remaining historical claims

Region 1: Southwestern North Island, South Island
and the Chatham Islands (Wai 2800)

The standing panel inquiry process for the first region is in preparation.