KĀINGA KORE

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The Stage One Report of
the Housing Policy and Services
Kaupapa Inquiry on Māori Homelessness

PRE-PUBLICATION VERSION

WAI 2750

WAITANGI TRIBUNAL REPORT 2023

ISBN 978-1-7385974-0-6 (PDF)

www.waitangitribunal.govt.nz
Typeset by the Waitangi Tribunal
Published 2023 by the Waitangi Tribunal, Wellington, New Zealand
27 26 25 24 23 5 4 3 2 1
Set in Adobe Minion Pro and Cronos Pro Opticals

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Parliament Buildings
WELLINGTON

17 May 2023

E ngā Minita,

Nei rā ngā mihi ki a kōutou i runga anō i ngā āhuatanga o te wā, tae atu ki ō tātou tini aituā. Kua tangihia o tātou tini mate huri noa te motu, kua

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MINISTRY OF JUSTICE
Tāhū o te Ture

mihia, kua poroporoakitia rātou. Nō reira waiho rātou kia moe. Moe mai rā.

Huri mai ki a tātou te hunga ora me te kaupapa kei mua i a tātou. Nō mātau te mauri manahau ki te tuku atu ki a kōutou i tā mātau pūrongo, *Kāinga Kore*. Hei mātakitaki mā kōutou, mā te Kāwanatanga, mā ngā kaituku kerēme, heoi anō, mā te motu whānui.

Enclosed is our priority report that has focused on Crown policies to address Māori homelessness. It was the claimants' firm request to begin the Housing Policy and Services Kaupapa Inquiry in this way, since they were concerned that homelessness was the most acute and urgent issue we faced. We realised that it would be difficult to address homelessness in isolation, however, since it appeared inextricably linked to all other issues in the inquiry. It seems, in short, the outcome of the entire range of problems we must traverse, from supply, affordability, and discrimination, to policy failure and historical grievances. It is arguably the sharp end of a system that has marginalised Māori for decades, and the result of Māori dispossession since the nineteenth century.

The Crown, though, joined with the claimants in requesting we prioritise homelessness. Given the general sense of urgency attached to the issue, particularly after the commencement of the COVID-19 pandemic, we agreed, albeit on a relatively narrow and focused basis. That is, we would consider the adequacy of the Crown's policies and strategies to address Māori homelessness since the Crown first developed a definition of homelessness in 2009. We excluded any examination of broader issues upon which we were yet to hear evidence and submissions, such as the lasting impact of colonisation or structural inequities in the housing system.

As it happened, many of the claimants found it difficult to restrict themselves to such narrow limits. We empathise with that, because we realise that the problem of homelessness cannot be solved without considering the broad range of factors that cause it. Our inquiry, however, has important evidence yet to be heard on the historical provision of housing to Māori, the longstanding barriers to building on whenua Māori, and the advent of the welfare state in the 1930s, and its later abandonment in the neo-liberal political economy of the 1980s and beyond. We could not make findings that compromised the integrity of our inquiry yet to come.

We have, however, been able to make findings on the narrow set of issues at hand. These findings stem from our identification of the Crown's treaty obligation, which largely derives from the guarantee of tino rangatiratanga over kāinga. In essence, the 'kāinga' referenced in te Tiriti

by and large no longer exist, due to Crown actions that caused widespread land loss and led to urbanisation. At the very least, therefore, the Crown must provide housing for Māori who are homeless, since the restoration of kāinga in such pressing circumstances is impractical. Furthermore, the Crown has article 3 duties to achieve equitable housing outcomes for Māori.

We have found, therefore, that the Crown breached the treaty by its failure to adequately consult Māori over its definition of homelessness in 2009. Then, over the following seven years, the Crown did practically nothing to address Māori homelessness. It developed a Māori housing strategy that it did not implement, allowed the relative provision of social housing (on which Māori heavily rely) to decrease, and toughened access to the social housing register. All the while, problems of housing affordability were worsening. When a housing crisis became all too apparent in May 2016, the Government's initial instinct was to deny it. In our inquiry, the Crown conceded that it had breached the treaty during the first part of our inquiry period, and we concur.

Since about 2018, the Crown has taken steps towards rectifying these omissions. It now has a homelessness strategy, as well as a new Māori housing strategy. It has stepped up the building of public housing, and has allocated significant sums of money towards Māori housing needs. Many of these developments occurred very close to the conclusion of our hearings – so close that we are not in a position to assess them, and reserve our position on them for a later report.

But despite these signs of progress, there have been continuing problems. The Crown's ongoing failures to adequately collect data on homelessness have constituted a breach of the principle of good government. Consultation with Māori over these new strategies has also been too narrow to meet the treaty standard. Agency coordination has remained unsatisfactory, and the Crown is yet to undertake overdue reform of the welfare system. We have also found that the lack of adequate support for homeless rangatahi has represented a specific treaty breach. Other cohorts, such as released prisoners, lack adequate housing support.

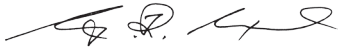
While we will deal with issues relating to housing on rural Māori land in a later report, we raise here the shocking living conditions of many Māori who have returned to their whenua. This poverty is largely hidden from public attention, but is all too familiar to the claimants and witnesses we heard from in our inquiry. It should be unacceptable in contemporary New Zealand. We consider it important that we stress that observation at this stage.

In terms of a remedy, the claimants were particularly interested in the creation and empowerment of a Māori housing authority, which they felt

would fulfil the Crown's partnership obligations under the treaty. It would, they believed, enable Māori to find their own solutions to homelessness and other housing challenges. Given the narrowness of our priority inquiry, however, this is not a matter we can make a recommendation on at this stage. We encourage the Crown and claimants to discuss this matter in the meantime.

Heoi anō, e ngā rangatira, kua tukuna atu e mātou, ngā whakaaro o te Roopu Whakamana i te Tiriti o Waitangi. Hei aha? Hei whakaaroaro mā koutou o te Whare Pāremata, mā Ngāi Māori, mā te motu whānui hoki.

Nāku noa, nā



Judge C T Coxhead
Presiding Officer

ABBREVIATIONS

app	appendix
CA	Court of Appeal
ch	chapter
CHP	community housing providers
cl	clause
CYRAS	Oranga Tamariki's case work management system
DHB	district health board
DNA	deoxyribonucleic acid
doc	document
ed	edition, editor
EHSNG	emergency housing special needs grant
ETITO	Electro Technology Industry Training Organisation
ETHOS	European Typology of Homelessness and Housing Exclusion
FEANTSA	European Federation of National Organisations working with the Homeless
HAP	Homelessness Action Plan
HNZC	Housing New Zealand Corporation
HSAG	Housing Shareholders Advisory Group
ICESCR	International Covenant on Economic, Social and Cultural Rights
LAMAH	lack of access to minimally adequate housing
ltd	limited
memo	memorandum
MHUD	Ministry of Housing and Urban Development
MOH	Ministry of Health
MSD	Ministry of Social Development
MTeR	Manaaki Tangata e Rua
NGO	non-governmental organisation
NZLR	*New Zealand Law Reports*
OIA	Official Information Act 1982
p, pp	page, pages
para	paragraph
PC	Privy Council
pt	part
ROI	record of inquiry
SC	Supreme Court
s, ss	section, sections (of an Act of Parliament)
SSM	*Social Science & Medicine*
UDHR	Universal Declaration on Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
v	and (in legal case names)

vol	volume
Wai	Waitangi Tribunal claim
WINZ	Work and Income New Zealand

Unless otherwise stated, footnote references to briefs, claims, documents, memoranda, papers, submissions, and transcripts are to the Wai 2750 record of inquiry, a full copy of the index to which is available on request from the Waitangi Tribunal.

CHAPTER 1

HEI TĪMATANGA KŌRERO / INTRODUCTION

1.1 About this Report

This stage one report of the Wai 2750 Housing Policy and Services Kaupapa Inquiry addresses 79 claims concerning Māori homelessness.[1] Claimants alleged that the Crown has breached the treaty because its legislation, policies, and national strategies since 2009 'fail to adequately address homelessness and severe housing deprivation and fail to meet the needs of Māori under Te Tiriti o Waitangi'.[2]

Our decision to prioritise homelessness over other housing policy and services issues, and to release a report addressing this issue alone, was not taken lightly. The process by which we reached our decision is described more fully in section 1.2.1. It is important to note here that focusing stage one exclusively on contemporary homelessness is above all a reflection of the parties' wishes. During the pre-hearing phase, the majority of claimants pressed for an expedited stage one inquiry into homelessness.[3] However, some disputed the merits of such an approach, arguing that the causes of homelessness were so complex and far-reaching as to warrant fuller inquiry and additional technical research. Contemporary homelessness issues could not be readily disentangled from the '180 years of Crown policy' that had created them, they said.[4] Meanwhile, the Crown came to adopt the majority position: it submitted that 'homelessness is recognised as an immediate issue which could be considered as the first issue to be inquired into as part of the housing policy and services kaupapa inquiry'.[5]

It must be remembered that, at the time we made our decision, there was a widespread sense of urgency to deal with homelessness, particularly given the onset of the COVID-19 pandemic. Given the exigencies of the day, therefore, we agreed to proceed on the basis favoured by the majority of claimants and the Crown: that is, with a focused inquiry into the Crown's current homelessness policies and strategies.

As we will see (in section 4.2.1), many of the claimants ended up during the hearings wanting us to range more broadly than the narrow scope we had agreed to by addressing the broader determinants of homelessness. We recognise that relevant wider issues include (but are not limited to) the relationship of homelessness to:

1. Memorandum 2.5.35(b) (list of eligible claims for stage one), pp [1]–[2].
2. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 8; memo 2.5.25, pp 13–14.
3. Memorandum of counsel 3.1.172 (claimant).
4. See, for example, memorandum of counsel 3.1.212 (claimant).
5. Memorandum of counsel 3.1.211 (Crown), p 2.

colonisation; poverty and inequality; the Māori land title system; wealth distribution in housing; the taxation system and fiscal policy; the actions of local government; and the resource management regime. We could not, in this prioritised inquiry, provide a report of such breadth and depth. Nor do we wish to give the impression that homelessness is a phenomenon that occurs in total isolation from the wider social and economic context. We therefore note briefly that its causes, especially for Māori, are varied and far-reaching, including the processes of colonisation and the attendant large-scale loss of land. The effects of these processes can be seen in, among other things, the difficulties that Māori face in building on or developing the land they do still own. There are also more recent causes that relate to socio-economic policy over the last three to four decades. We will provide a fuller account of these matters in a later report.

Despite the necessary constraints we imposed, we nevertheless feel that we have been able to say enough about the policy response from 2009 to 2021 to deliver a report that makes a worthwhile contribution in its own right. In this chapter, we set out the procedural background to this inquiry, the development of the statement of issues, the stage one hearings, and the parties and their positions (chapter 4 provides greater detail on these positions). Finally, we set out the structure of this report.

Throughout, in keeping with the approach adopted by the Waitangi Tribunal in *He Whakaputanga me te Tiriti: The Declaration and the Treaty*,[6] we use 'te Tiriti' to refer to the Māori text of the treaty, 'the Treaty' to refer to the English text, and 'the treaty' to refer to both texts or to the event as a whole without specifying either text.

1.2 Pre-Hearing Phase of this Inquiry

In November 2017, the Tribunal chairperson, Chief Judge Wilson Isaac, announced judicial conferences would be held to consult claimants and the Crown on starting two new kaupapa inquiries.[7] One concerned claims into housing policy and services, while the other related to the status and treatment of wāhine Māori. Housing policy and services had originally been intended to form part of a broader inquiry into social services, social development, and housing, which was scheduled to commence later.[8] However, housing issues overlapped to some extent with those of another kaupapa inquiry that had commenced in 2016, the Health Services and Outcomes Inquiry. Chief Judge Isaac concluded that commencing a housing

6. Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wellington: Legislation Direct, 2014), p 2.

7. This Housing Policy and Services inquiry is part of the Waitangi Tribunal's kaupapa inquiry programme, announced in April 2015. During the programme's establishment, the chairperson of the Waitangi Tribunal, Chief Judge Wilson Isaac, said that kaupapa inquiries would provide a pathway to hear claims not included in the district inquiries that concern issues of national significance 'affecting Māori as a whole'. He added that, while the scope of kaupapa inquiries could be either broad or specific, a broad approach was preferred: memo 2.5.1(a), pp 2–3, 5.

8. Memorandum 2.5.1(a), p 6.

inquiry alongside one addressing health 'may assist the two inquiries to adjust potential overlaps in their scope of issues and the parties to address all aspects of alleged housing-related grievances and prejudice in parallel inquiry processes'.[9]

Following the judicial conference to discuss the housing inquiry, held on 13 March 2018, the parties were invited to submit or amend statements of claim relating to housing issues.[10] At that point, most claims included housing 'amongst a broader range of socio-economic grievances that are expressed in general terms and similar ways', the chairperson noted. Many alleged Crown failure to 'assure an adequate standard of housing for Māori, both rural and urban, or to deliver state services, programmes and support enabling Māori access to adequate housing'.[11]

On 8 June 2018, counsel for one claimant group drew attention to homelessness issues and submitted that these claimants were 'ready to proceed to hearings' on that matter. They wanted to do so as early as possible as the issues were of 'such significance' that they needed to be addressed immediately in order 'to avoid further prejudice to the Claimants'.[12]

However, on 31 July 2018, the Crown proposed the inquiry be put into a six-month 'hiatus' to allow the new Ministry of Housing and Urban Development to begin implementing recently developed initiatives the Crown said aimed to address 'housing issues facing New Zealanders'.[13] The Crown said that doing so would ensure the Tribunal was informed of current policy and policy outcomes during the inquiry.[14] This proposed hiatus was strongly opposed by all claimants.[15] The chairperson declined the Crown's request, in part because he considered it inconsistent with the Crown's previous position: that the inquiry should prioritise contemporary issues as findings on these issues could help in the development of Crown policy.[16]

The possibility of staging the inquiry became the subject of specific discussion. Some parties first proposed a staged approach in October 2018, saying it would allow contemporary matters to be dealt with initially, followed by historical issues (as discussed in section 1.2.5).[17] In May 2019, counsel filed a joint memorandum on behalf of 46 claimant groups. It urged the Tribunal to update claimants on the way the inquiry would proceed, and submitted that

9. Memorandum 2.5.1, p 3.
10. Memorandum 2.5.3, p 2.
11. Memorandum 2.5.1, p 3.
12. Memorandum 3.1.101 (claimant), p 7.
13. Memorandum 3.1.99 (Crown), pp 2, 13.
14. Memorandum 3.1.99 (Crown), p 3.
15. Memorandum 3.1.111 (claimant), p 2; memo 3.1.113 (claimant), p 1; memo 3.1.114 (claimant), p 2; memo 3.1.115 (claimant), p 3; memo 3.1.116 (claimant), p 1; memo 3.1.117 (claimant), p [2]; memo 3.1.118 (claimant), p 2; memo 3.1.119 (claimant), p 1; memo 3.1.120 (claimant), p 1; memo 3.1.121 (claimant), p 6; memo 3.1.122 (claimant), p 1; memo 3.1.123 (claimant), p 2; memo 3.1.124 (claimant), pp 2–4; memo 3.1.126 (claimant), pp 4–5; memo 3.1.127 (claimant), pp 2–3; see also doc A1 (John Tamihere), p 3.
16. Submission 3.1.21 (Crown), p 1; memo 2.5.8, p 4.
17. Memorandum 2.5.8, p 4.

> many individuals and whānau with young children still have no-where to live – they are living on the streets, they are living in cars – they are not safe. The housing crisis is worsening by the day. This inquiry is urgent and needs to be prioritised for the well-being of our people.[18]

On 25 July 2019, the Tribunal chairperson formally initiated the Housing Policy and Services Kaupapa Inquiry. He appointed Judge Craig Coxhead as presiding officer, and Prue Kapua and Basil Morrison as Tribunal panel members (Dr Paul Hamer was subsequently appointed as a panel member on 9 February 2021).[19]

In August 2019, Judge Coxhead said he would convene a judicial conference later that year to discuss possible ways forward. It would seek parties' views about the possibility of staging the inquiry and whether claims regarding homelessness should be grouped together as a priority.[20]

It soon became clear that some claimants opposed a staged approach. In September 2019, in a joint memorandum on behalf of four claimants, counsel submitted that 'this inquiry should proceed on a thematic basis rather than adopt a staged approach like that used in the Wai 2575 Health Services and Outcomes Kaupapa Inquiry'.[21] They argued that during the health inquiry there was 'rarely unanimous agreement between claimant counsel on which issues should be prioritised'.[22]

At the judicial conference (held on 21 October 2019), claimant counsel proposed the idea of a national claimants' hui for the following March. Judge Coxhead indicated that, while the Tribunal would not participate, it would be useful if agreement could be reached over the course of the hui on the following matters: the design of the inquiry; the aspects of housing policy and services that should be heard first; what the scope of the inquiry would be if homelessness or 'immediate housing needs' was heard first; and the sequencing of issues.[23]

1.2.1 The prioritisation of homelessness

On 31 January 2020, before the proposed national claimants' hui, counsel representing 31 claimants filed a joint memorandum asking for homelessness to be prioritised within the inquiry, culminating in an 'interim report' on that issue alone:

> The purpose of this phase is for the early hearing of evidence concerning homelessness. In regard as to whether we request an interim report, we submit that while an interim report is desired, that the Crown need not wait for a Tribunal Report to be

18. Memorandum 3.1.141 (claimant), p 3.
19. Memorandum 2.5.9, p 2; memo 2.5.33, p 1.
20. Memorandum 2.5.10, p 4. Note that references to the presiding officer in the third person indicate that those decisions were not made by committee.
21. Memorandum 3.1.151 (claimant), p 1, a joint memorandum on behalf of Ngai Tamahaua (Wai 1781), Hurimoana Dennis and Te Puea Marae (Wai 2699), Veronica Henare and the Manukau Urban Māori Authority (Wai 2878), and Te Matapihi (Wai 2716).
22. Memorandum 3.1.151 (claimant), p 2.
23. Memorandum 2.5.14, p 4.

> completed before it can move to finding substantive resolutions, particularly when considering the urgency of this matter and the potential for further and lengthy delay. This matter requires further consideration and time should be made available for counsel to make submissions on that at a Judicial Conference.
>
> . . . .
>
> . . . [G]iven the current state of homelessness and the extent to which urgent support and policy change is required, it would be irresponsible for these claimants to not entreat the Tribunal to progress the homelessness process earlier, rather than await further hui which would have the effect of further prolonging inquiry into what is already a dire need.[24]

Two other claimants issued a joint memorandum in support of this request.[25]

However, some claimants opposed the proposed approach.[26] In February 2020, in a joint memorandum on behalf of five claimants, counsel argued that homelessness should not be isolated:

> While people who are presently homeless might thank the Waitangi Tribunal for hastening the hearing of this issue, people who are homeless in ten years' time, including many who are now, will not be so grateful for the rushed and limited scope of the policy that may be developed as a result.
>
> Homelessness arises from the full complexity of poverty, and that poverty arises from a much broader picture of colonial history and its resultant social and economic policy. We submit that this Kaupapa Inquiry needs to maintain its breadth of focus on Housing Policy and Services as a whole: giving the opportunity to examine all problems contributing to homelessness, rather than treating the symptoms alone.
>
> As a result, it is the position of our clients that homelessness should not be isolated from the rest of this inquiry or given priority in the order of hearings.[27]

24. Memorandum 3.1.172 (claimant), pp 4–5; the memorandum of counsel was filed on behalf of Hurimoana Dennis on behalf of Te Puea Marae (Wai 2699); Veronica Henare on behalf of Manukau Urban Māori Authority (Wai 2878); Ngai Tamahaua (Wai 1781); Te Matapihi (Wai 2716); Te Whanau o Waipareira Trust, and the National Urban Maori Authority (Wai 2813); Te Waimate Taiamai ki Kaikohe Claims Alliance (Wai 869); Nga Uri o Rawiri Tamanui (Wai 874); Tarewa Kingi (deceased) and Owen Kingi on behalf of Whangaroa Papa Hapu and Ngati Uru (Wai 1832); Georgina Clark (Housing for Recently Released Prisoners) (Wai 2742); Anania Wikaira on behalf of Te Komiti Maori o Whirinaki (Wai 700); Manurewa Marae (Wai 2722); Kristi Henare (Wai 2752); Carmen Hetaraka (Wai 2739); J Hotere (Wai 568); J Hotere (Wai 2425); J Kingi (Wai 1941); R Dargaville (Wai 2179); Te Raumoa Balneavis Kawiti, Rhonda Aorangi Kawiti (Wai 120); Gary Theodore, Pereme Porter, Rangimarie Maihi (Wai 966); Deidre Nehua (hapu and iwi of Te Tai Tokerau) (Wai 1837); Herbert Rerekura (South Taranaki District Council Rates Claim) (Wai 2679); Mereri Mary Hepana (Housing Papakainga Claim) (Wai 2731); Richard Takuira (Housing Kaumatua Claim) (Wai 2732); Tahei Simpson, Keri Dell, Waara Varley (Housing Racism Claim) (Wai 2805); Edward Penetito (Wai 972); Waitangi Wood (Wai 1661); Ricky Houghton (Wai 1670); Terry Tauroa (Wai 1843); Jane Ruka (Wai 1940); Tahua Murray (Wai 2389); and Teresa Goza (Wai 2740).

25. Memorandum 3.1.173 (claimant), p 1.

26. Memorandum 3.1.174 (claimant), p [6]; see also memo 3.1.172(a) (claimant), p 1.

27. Memorandum 3.1.174 (claimant), p [6].

The New Zealand Māori Council (NZMC) argued that responding to homelessness effectively required more than prioritising the issue; the drivers and causes of homelessness would also need to be addressed:

> Homelessness is the most visible failure of our housing system and the social systems that are meant to support our people. However, it is logically 'downstream' from an investigation of our housing system as a whole – it can only be understood in the light of the failures of that system. Homelessness is an incredibly serious, and deadly, issue in its own right, but in order to develop Waitangi Tribunal recommendations that will lead to effective policy and practice changes of recognised value over the next 30 years, homelessness must first be understood in its full and intergenerational complexity.[28]

That same month, in a joint memorandum on behalf of 12 other claimants, counsel submitted that, while their clients agreed that the issue of homelessness was 'urgent and pressing', they did not 'see how it would be possible to evaluate the causes of homelessness without having a comprehensive inquiry'.[29] They submitted that housing policies and services that caused homelessness should not be separated from the rest of the inquiry. Yet, they also said there could be a 'discrete stage examining current Crown proposed and enacted legislation, policies and practices in response to homelessness', which could be 'convened as a matter of priority in July 2020'.[30] These claimants were thus somewhat inconclusive about their favoured approach.

Meanwhile, the Crown submitted that a focus on current issues, rather than historical ones, would best assist it to improve housing service delivery for Māori. The Crown supported a staged inquiry, including a focus on current homelessness, stating that 'several claimants have indicated a preference for contemporary issues, such as homelessness, to be addressed as a priority.'[31]

However, the Crown also pointed to the 'many issues which are inexplicably entwined with the issue of homelessness',[32] including those covered in the Health

28. Memorandum 3.1.212 (claimant), p 2.
29. Memorandum 3.1.175 (claimant), pp 2–3; The Memorandum of Counsel was filed on behalf of William Taueki, on behalf of himself, the late Ron Taueki, the Taueki whānau and Muāupoko (Wai 237); Evelyn Kereopa, on behalf of herself, the Kereopa whānau and members of Te Ihingarangi (Wai 762); David Hawea and Keith Katipa, on behalf of Te Whānau a Kai (Wai 892), Te Enga Harris and Lee Harris, for and on behalf of the Harris whānau (Wai 1531); Robert Gabel, for and on behalf of the Ngāti Tara hapū (Wai 1886); Denise Egen, for and on behalf of herself, her whānau and members of Mahurehure (Wai 2005); Jasmine Cotter-Williams, for and on behalf of herself, her whānau and Ngāti Taimanawaiti (Wai 2063); Charlene Walker-Grace, for and on behalf of herself and members of Te Hokingamai e te iwi o Ngāti Whātua Ngāpuhi nui tonu (Wai 2206); Annette Hale, for and on behalf of the Wikotu whānau and Te Ūpokorehe (Wai 2743); John Kearns and Maeva Kearns, for and on behalf of the Kearns whānau (Wai 2747); Tukuparaehe Mau, for and on behalf of the Mau whānau (Wai 2761); and Okeroa Rogers, for and on behalf of the Rogers whānau (Wai 2869).
30. Memorandum 3.1.175 (claimant), pp 3, 5.
31. Memorandum 3.1.165 (Crown), p 11.
32. Memorandum 3.1.165 (Crown), p 11.

Services and Outcomes Inquiry and the Mana Wāhine Inquiry.[33] Accordingly, the Crown submitted that it would be 'useful to engage in kōrero as to which issues associated with homelessness should sensibly be inquired into at the same time as homelessness'.[34] The Crown later clarified that it envisaged this kōrero would help refine the scope of the inquiry before it began, especially by clarifying 'what is meant by "homelessness"'.[35] The Crown also said that the scope of the inquiry 'ought to be informed by the views of claimants, and Māori generally, who might be expected to attend and participate in the Claimants' [March 2020] hui'.[36]

The arrival of the COVID-19 pandemic in New Zealand lent matters a new urgency. While in February 2020 the Crown submitted that its 'recently announced Homelessness Action Plan [should mean that] at least some of the urgency in commencing an inquiry into homelessness issues will have been mitigated',[37] its stance shifted swiftly as COVID-19 cases soared. In March 2020, the Crown wrote that '[t]he unprecedented global outbreak of COVID-19 has created many additional challenges and heightened the critical concerns for ensuring housing wellbeing in New Zealand.'[38] Therefore, not withstanding its Homelessness Action Plan, the Crown submitted that it 'has never suggested homelessness ought not be afforded priority in the Wai 2750 Inquiry.'[39] Provided that expediting the inquiry did not mean neglecting due process, the Crown considered 'a focussed Tribunal inquiry into current homelessness policies and services will benefit all parties, particularly in exploring ways in which Māori can be more actively engaged in both policy development and service delivery'.[40]

Judge Coxhead had earlier said he would wait for any agreed outcomes to emerge from the national claimants' hui before deciding whether to prioritise homelessness.[41] However, the national hui was cancelled due to COVID-19 and an urgent teleconference instead took place on 27 March, attended by counsel for the Crown and most claimants.[42] In a joint memorandum filed on behalf of the majority of claimants, counsel submitted that the cancellation of the national claimants' hui and the state of emergency now in place because of COVID-19 'should not of itself delay progress toward a prioritised homelessness phase of this inquiry'. Instead, engagement between and amongst counsel and their claimants at regional levels would have to suffice, 'given the urgency of the matters'.[43] Claimant counsel also submitted that '[a] prioritised homelessness phase fits within the purpose, scope, and parameters of Kaupapa Inquiries already outlined by Chief

33. Memorandum 3.1.165 (Crown), p 12.
34. Memorandum 3.1.165 (Crown), p 12.
35. Memorandum 3.1.176 (Crown), p 3.
36. Memorandum 3.1.176 (Crown), p 2.
37. Memorandum 3.1.176 (Crown), p 3.
38. Memorandum 3.1.211 (Crown), p 1.
39. Memorandum 3.1.211 (Crown), p 2.
40. Memorandum 3.1.211 (Crown), p 2.
41. Memorandum 2.5.18, p [2].
42. Memorandum 2.5.19, p [3].
43. Memorandum 3.1.213 (claimant), p 4.

Judge Isaac.'[44] The claimants agreed at the teleconference that Wackrow Williams & Davies would act as coordinating counsel in the event of homelessness being the first stage of the inquiry.[45]

The following month, Judge Coxhead noted a lack of claimant consensus on how the inquiry should proceed and also that several issues raised by the parties still needed to be addressed. Another judicial conference was needed to allow the Tribunal to hear submissions on the prioritisation of Māori homelessness and immediate housing needs. This way, it could reach an informed decision on staging the inquiry and whether there was sufficient evidence and existing research to prioritise homelessness claims. Judge Coxhead indicated the Tribunal's willingness to conduct a homelessness inquiry, provided that the parties clearly agreed on this course, and provided there would be enough evidence for an inquiry of this narrower scope.[46] The judicial conference took place on 17 July 2020 where, among other matters, the Crown said it supported the practice that the claimants decide how they would like the inquiry to proceed.[47] On 16 September 2020, we confirmed that stage one of the Housing Policy and Services Kaupapa Inquiry would commence by considering the Crown's contemporary national strategy, or strategies, for addressing Māori homelessness.[48]

1.2.2 Technical witnesses and commissioned research

In March 2020, the Crown had identified several issues that needed to be worked through in order for us to make informed findings on homelessness. One was the provision of technical evidence; the Crown said the Tribunal would presumably rely on existing research reports and expert knowledge as there was insufficient time for technical witnesses to undertake commissioned research.[49] Most claimants agreed, with 67 filing a joint memorandum later that month submitting there was 'enough technical evidence already available to enable us to hear evidence on homelessness now'.[50]

However, in July 2020, 16 claimants called for the Tribunal to commission research led by social policy expert Charles Waldegrave. It would summarise existing research, identify gaps in the historical record and, in the view of the claimants, would be preferable to research being undertaken by claimant counsel 'most of whom are not trained or expert in technical historic analysis'. Counsel advised that Te Puni Kōkiri had agreed to fund this research if commissioned by the Tribunal. These claimants again raised concerns about the need to address the root causes of homelessness and submitted that the Tribunal should not proceed to a discrete homelessness phase without targeted expert research.[51]

44. Memorandum 3.1.219 (claimant), p 3.
45. Memorandum 3.1.213 (claimant), p 5.
46. Memorandum 2.5.19, p [5].
47. Transcript 4.1.3, p 86.
48. Memorandum 2.5.25, p 14.
49. Memorandum 3.1.211 (Crown), p 3.
50. Memorandum 3.1.213 (claimant), p 2.
51. Memorandum 3.1.234 (claimant), pp 5–8.

Another group of claimants also raised concerns about insufficient research. Their counsel argued that if, for example, the inquiry were to examine the Government's exit from the home loan market and its impact on housing affordability and homelessness, research would be needed into the Government's involvement in the home loan industry and associated historical factors. The same would be needed in relation to the impact of the fragmentation of title on the development of Māori freehold land. Claimant counsel stated:

> Without the research referred to, the adequacy and effectiveness of any Tribunal inquiry into these particular topics would become an issue. On the other hand, should the homelessness inquiry involve an examination of the particular Crown activity referred to above, there would be an acute risk to the adequacy of any such examination if, in the interests of expedition, it should be conducted without the requisite historical research and analysis having been undertaken, or it is conducted with a partially completed research effort.[52]

Instead, these claimants contended that the value of an inquiry into Māori homelessness would be enhanced if the emphasis was on the Crown's legislation, policy, and practice regarding homelessness.[53]

On 23 July 2020 Judge Coxhead released the pre-casebook research discussion paper, prepared by Tribunal staff to assist the Tribunal and parties to consider the evidential basis required to proceed to hearing.[54] On 13 November he concluded that no further commissioned research was needed for stage one, since this stage would be 'targeted and selective in its approach.'[55]

1.2.3 The definition of homelessness

Throughout the pre-hearing stage of the inquiry, the definition of homelessness was a constant topic of discussion between claimants and the Crown. The Crown submitted, on several occasions, that an agreed definition was needed for the inquiry.[56] On 2 April 2020, the Crown said it supported the claimant proposal 'that a definition of homelessness should be provided by the claimants through their counsel'. The Crown also submitted that well-known experts in homelessness could 'potentially' contribute to the development of such a definition and that the Crown would 'welcome the opportunity to provide names of potential contributors.'[57]

The Crown nonetheless commended the Statistics New Zealand definition as it was based on the European Typology of Homelessness and Housing Exclusion (ETHOS), the categories of which were adapted to 'meet the requirements of the societal, cultural and environmental contexts in New Zealand' (see sections

52. Memorandum 3.1.239 (claimant), pp 3–4.
53. Memorandum 3.1.239 (claimant), p 4.
54. Memorandum 2.5.22, p 2; paper 6.2.2, p 6.
55. Memorandum 2.5.27, p 5.
56. Memorandum 3.1.211 (Crown), p 3; memo 3.1.215 (Crown), p 2.
57. Memorandum 3.1.215 (Crown), p 2.

2.2.1 and 2.2.2 respectively for more on the ETHOS definition and the Crown's position).[58] Yet, as we discuss further in chapter 4, there had been limited consultation with Māori in the development of the definition. We note that the Crown accepted that claimants did not consider the definition to be appropriate for the purposes of this inquiry.[59]

The Crown also advised it had adopted Dr Kate Amore and colleagues' definition of severe housing deprivation (which will be discussed in more detail in chapter 2). This definition was said to capture 'a range of housing deprivation, wider than "rough sleeping"' and, as the Crown said, the definition provided 'the most fulsome national estimate of the number of people experiencing homelessness'. Consequently, it would assist the Government and community housing providers with consistency in collection and reporting of data.[60]

Like the Crown, claimants also considered that it was critical to reach an agreed definition of homelessness before the inquiry began.[61] Further, they argued that the definition must come from the claimants themselves (which the Statistics New Zealand definition had not) and '*all claimants* will have the opportunity to have input into its development and production' (emphasis in original).[62] The majority of claimants formulated their own definition in May 2020, with a smaller group of claimants then suggesting an alternative.[63] It was the majority claimants' view that the definition of homelessness adopted by the Crown, while informative, failed to reflect the living situation of Māori and a tikanga Māori perspective of homelessness 'which can be experienced through the loss of connection with culture, land, whanau, hapu and iwi'.[64] Faced with these divergent views, in September 2020 we advised parties that it was preferable for the inquiry to begin without an agreed definition of homelessness.[65]

1.2.4 The rationale for a staged inquiry

As we have already noted, our September 2020 memorandum confirmed that stage one of the inquiry would concern the Crown's contemporary strategies addressing Māori homelessness. We also acknowledged the importance of the historical causes of Māori homelessness, as well as other related contemporary issues, and indicated we would consider these later in the inquiry.[66] We further announced that stage one would inquire into Māori homelessness from 2009 – the year 'when homelessness was first comprehensively defined by the Crown as per the Statistics

58. Memorandum 3.1.215 (Crown), pp 2–3.
59. Memorandum 3.1.215 (Crown), p 3.
60. Memorandum 3.1.215 (Crown), pp 2–3.
61. Memorandum 3.1.213 (claimant), p 3; claimant counsel for Hurimoana Dennis with the support of the trustees of Te Puea Memorial Marae Trust (Wai 2699), Veronica Henare supported by the Manukau Urban Māori Authority (Wai 2878), and Tracy Hillier and Rita Wordsmith (Wai 1781).
62. Memorandum 3.1.219 (claimant), p 4.
63. Memorandum 3.1.225(b) (Schedule 2 to joint memorandum of counsel), pp 1–2; memo 3.1.226 (claimant), p 5.
64. Memorandum 3.1.225(b) (Schedule 2 to joint memorandum of counsel), p 2.
65. Memorandum 2.5.25, p 14.
66. Memorandum 2.5.25, p 14.

New Zealand definition'. Importantly, this decision did not indicate our preference for this definition of homelessness over any other. Rather, it was simply a useful starting point.[67]

We defined the scope of the inquiry as:

a) Crown policies, practices, actions and alleged omissions from 1 August 2009 to the present as they relate to a national strategy (or strategies) addressing issues of Māori homelessness; and
b) Māori responses to the policies, practices, actions and omissions from 1 August 2009 to the present resulting from the Crown's national strategy (or strategies) addressing Māori homelessness.[68]

Judge Coxhead advised that if, during this stage of the inquiry into Crown policies, practices, legislation, actions, and omissions, we determined that any breached the principles of the treaty, we would also consider what changes would be necessary for the Crown to be treaty compliant. Any findings and recommendations we made in this respect would be included in the stage one report.[69]

1.2.5 The statement of issues

Claimant counsel filed a draft joint statement of issues for the homelessness phase of the inquiry on 15 October 2020,[70] with the Crown providing comments on the draft later that same month.[71] Drawing on all this input, the Tribunal confirmed the following statement of issues (and related questions):

2. Crown obligations in regard to Māori homelessness

2.1. Does the Crown's current and proposed legislation, policies and national strategies addressing homelessness and severe housing deprivation meet the needs of Māori under Te Tiriti o Waitangi/the Treaty of Waitangi?

3. Formulation of Crown Policies relating to Māori Homelessness 2009–2020

3.1. Did the Crown act with sufficient urgency in recognising Māori homelessness? If so, has it delivered a timely and coherent national response?

3.2. Was the Crown sufficiently engaged and responsive in its Te Tiriti/Treaty relationship with Māori in developing its response?

4. Crown Policies relating to Māori Homelessness 2009–2020

4.1. Have the Crown's national strategies been adequately monitored and responsive to the needs and developments in Māori homelessness? If so, has there been

67. Memorandum 2.5.25, p 14.
68. Memorandum 2.5.25, p 14.
69. Memorandum 2.5.27, p 2.
70. Statement 3.1.284(b) (claimant draft statement of issues), pp 4–12.
71. Statement 3.1.293(a) (Crown annotated draft statement of issues).

adequate opportunity for Māori decision-making power in the Crown's design, implementation and monitoring of strategies relating to Māori homelessness?

5. Response of and outcomes for Māori from Māori Homelessness Policies

5.1. Do the Crown's national strategies that respond to homelessness and severe housing deprivation (for example, 'He Whare Āhuru He Oranga Tāngata – The Māori Housing Strategy 2014–2025', 'Aotearoa New Zealand Homelessness Action Plan', and the proposed Government Policy Statement on Housing and Urban Development) consistently apply the principles of Te Tiriti/the Treaty? If so, how is consistency across strategies maintained and achieved?

5.2. Has the Crown's response to homelessness provided adequate and appropriate support for the diverse experiences of Māori with regards to housing of released prisoners, overcrowding, age, location, and health status?

6. If changes are required to the Crown's response, what legislation, policy and tools are necessary to adequately address Māori homelessness?[72]

In this report, we address and (where appropriate) make determination on these issues under the following broad thematic headings:

- the scope of the inquiry;
- the definition of homelessness;
- the Crown's duties with regard to housing;
- the Crown's obligations under international law;
- the Crown's duty with regard to data collection;
- the Crown's attentiveness to homelessness from 2009 to 2016;
- the potential of the Crown's latest policies and strategies;
- the Crown's approach to consultation;
- the Crown's embrace of tikanga and mātauranga Māori;
- the Crown's internal coordination;
- the role and mandate of Kāinga Ora;
- the culture of the Ministry of Social Development;
- rural issues and whenua Māori;
- rangatahi homelessness;
- released prisoners;
- gang whānau; and
- the possibility of a Māori housing authority.

72. Statement 1.4.1 (statement of issues), pp 1–2. The statement of issues begins at number 2. Number 1 (not included here) provided an introduction to stage one of the inquiry, outlined how the statement of issues was developed, and noted that it was intended as a guideline for claimants, the Crown, and interested parties during the preparation of their cases and submissions: see statement 1.4.1, p 1.

1.3 The Stage One Hearings

The first two hearings in the inquiry were devoted largely to claimant evidence; they took place from 22 to 26 March 2021 and from 17 to 21 May 2021 at Te Puea Memorial Marae in Auckland. The May hearing also heard technical evidence commissioned by the claimants. The third hearing (21 to 25 June 2021 at Te Puni Kōkiri House in Wellington) was given over to Crown evidence from the Ministry of Housing and Urban Development, the Ministry of Social Development, Kāinga Ora – Homes and Communities ('Kāinga Ora'), Te Puni Kōkiri – the Ministry of Māori Development ('Te Puni Kōkiri'), and the Department of Corrections.

We heard claimant closing submissions from 26 to 29 October 2021 and Crown closing submissions on 15 November 2021, with both hearings taking place at the Waitangi Tribunal's offices in Wellington. Due to the ongoing impacts of COVID-19 and the public safety precautions, most claimants and counsel participated remotely by audio-visual link for the final two days of the third hearing and for all of the last two hearings.

Although stage one hearings finished in November 2021, the Crown continued to file new material relevant to homelessness. Judge Coxhead acknowledged this in a memorandum and observed that claimant counsel had not opposed this approach. He clarified that these documents would continue to be accepted 'on the condition that they are not prejudicial to the claimants or do not require testing at a hearing'. Any information in them, he said, should be contextual rather than 'substantially new material'.[73] The matter was discussed at a judicial conference in late 2022, after which Judge Coxhead confirmed his previous decision to allow such filings for contextual purposes only.[74]

1.4 Overview of the Parties

1.4.1 Claimants and interested parties

Seventy-nine claims were confirmed as eligible to participate in stage one of the housing inquiry. They came from individuals, whānau, hapū, and other entities including Māori urban authorities, the NZMC, and Māori service providers. Applications for interested party status were also received, and 21 were granted.[75]

73. Memorandum 2.6.31, p 3.

74. Memorandum 2.6.38, p 3; see also memo 2.6.42, pp 2–3.

75. Memorandum 2.5.35(b), p [3]; interested parties included Ruapani Lands Claim (Wai 144); Whakarara Mountain claim (Wai 375); Kaiwharawhara and Hutt Valley Lands claim (Wai 377); Kerikeri Lands claim (Wai 520); Kapiro Farm claim (Wai 523); Upokorere claim (Wai 1092); Ngaruroro River and Kohupatiki Marae claim (Wai 1567); Adoption, Fostering and Wards of State (Beckett) claim (Wai 1656); Ngāti Rua (Wood, Smith and Wood) claim (Wai 1661); Upokorehe Hapū Ngāti Raumoa Roimata Marae Trust claim (Wai 1758); Rongopopoia Hapū claim (Wai 1787); the Ngā Ruamahue Hapū Lands and Taonga claim (Wai 2389); Mana Wāhine (Chaney) claim (Wai 2875); Mana Wāhine (Tamati-Mullen Mack) claim (Wai 2924); the Oranga Tamariki redacted (JF) claim (Wai 2974); the Oranga Tamariki Redacted (PA) claim (Wai 2975); the Mana Wāhine (KM) claim (Wai 2994); Mana Wāhine (PA) claim (Wai 2996); Mana Wāhine (Potiki) claim (Wai 3012); Military Veterans (Ratima) claim (Wai 3017); and Moana Gerald Kiwara, on behalf of himself, and his whānau (individual party).

Geographically, the claimants and their areas of interest were spread across the country and were from a mix of urban and rural communities. Many were concentrated in Te Tai Tokerau and Tāmaki Makaurau, but claims were also lodged by groups with interests in many other parts of the country, such as South Taranaki, Wairarapa, and Ōtautahi. A full list of claims, claimants, and interested parties in this inquiry appears in the appendix.[76]

1.4.2 The Crown

Crown agencies participating in stage one of the inquiry were Kāinga Ora, the Ministry of Housing and Urban Development, the Ministry of Social Development, Te Puni Kōkiri, and the Department of Corrections. Kāinga Ora, the Ministry of Social Development, and the Ministry of Housing and Urban Development share responsibility for administering social housing. Te Puni Kōkiri works with other Crown agencies to improve Māori housing, and the Department of Corrections provides some housing and re-integration support for released prisoners.[77] We note that we did not hear from Statistics New Zealand, despite its role in the development of the Crown's definition of homelessness in 2009.[78]

1.5 The Structure of this Report

As noted, the Housing Policy and Services Kaupapa Inquiry is a staged inquiry. This report addresses stage one issues relating to Māori homelessness and draws predominantly on evidence and arguments presented to the Tribunal during the stage one hearings. We will hear evidence and arguments on broader housing issues later in the inquiry, and will report our findings separately.

Our report begins by describing homelessness in Aotearoa New Zealand during the period from 2009 to 2021, particularly as it affected Māori. Chapter 2 outlines the key initiatives, policies, and strategies the Government introduced in response to the worsening homelessness situation – but not, we note, until 2016. At the end of chapter 2, we have sought to reflect the variety of claimant experiences of homelessness by means of a series of vignettes. Told primarily in the claimants' own words, the vignettes highlight some of the evidence that claimants and witnesses shared with us, which vividly illustrated our key inquiry themes and demonstrated how people's experiences of homelessness differed from region to region.

Chapter 3 summarises the treaty principles and standards that most directly bear on the issues raised by the claims before us. In determining these, we have

76. See also submission 2.5.10(a) (Wai 2750 Housing Policy and Services Inquiry – List of Wai claims that intend to participate), pp [1]–[5] for a full list of claims and claimants for Wai 2750; submission 2.5.29(b) (List of eligible claims for Stage One), pp [1]–[2].

77. Submission 3.2.113(a) (Hearing week three timetable), pp [1]–[2]; submission 3.3.32 (Crown opening submissions), pp 13–19.

78. Nor did we hear from the Ministry of Business, Innovation and Employment, even though it retained some of its housing-related functions after most were transferred to the Ministry of Housing and Urban Development when the latter was established in 2018; see doc D1 (Andrew Crisp), p 32.

been guided both by Tribunal findings from previous reports and also by the parties' submissions in this inquiry.

In chapter 4, we set out the parties' positions on the key inquiry issues, provide our analysis, and – where appropriate – make findings on issues that fit within the scope of this inquiry. As we have been unable to assess the impact of the Crown's most recent policies, we have reserved our judgement on those and make just one recommendation overall. The issues discussed concern the Crown's duties and obligations in addressing Māori homelessness, as listed in section 1.2.5. All our findings are summarised in our concluding comments in chapter 5.

CHAPTER 2

KĀINGA KORE I AOTEAROA / HOMELESSNESS IN AOTEAROA NEW ZEALAND

2.1 About this Chapter

This chapter has two purposes. First, it outlines key issues, developments, and policy relating to homelessness in New Zealand from 2009, the agreed starting point for this stage of our inquiry, to the end of our hearings in 2021. This account is purely descriptive, without Tribunal commentary or assessment. The second part of the chapter focuses on how homelessness – and the policies, plans, and initiatives introduced to address it – was actually experienced during that period. It is drawn from claimant and witness evidence, and, again, is presented without Tribunal commentary.

The chapter begins by explaining how the term 'homelessness' is defined in New Zealand (and by extension how the term is used in this report). A clear definition is a prerequisite for understanding the various statistics that allow the extent of homelessness to be measured. Thus, sections 2.2 and 2.3 discuss the evolution of a New Zealand definition and experts' corresponding efforts to quantify homelessness nationally over the last two decades. This discussion draws principally on census data and the social housing register, noting as it does the data limitations that make accurate measurement challenging.

The sections that follow provide a chronological account of the key developments leading to what the Crown and claimants alike have referred to as the Māori 'housing crisis', and the Crown's response to that crisis. It starts with the period 2010 to 2015, which saw the establishment of the Housing Shareholders Advisory Group and the Social Housing Reform Programme, and the introduction of *He Whare Āhuru He Oranga Tāngata – The Māori Housing Strategy* (section 2.4). Section 2.5 focuses on the events of 2016, a watershed year in which homelessness became the subject of urgent national attention. We then outline Government action on homelessness since then, including the Crown's response to the additional challenges presented by the COVID-19 pandemic from 2020.

The chapter concludes with seven vignettes reflecting the impacts of homelessness during this period on individuals and communities, both rural and urban.

2.2 The Definition of Homelessness

A major milestone in New Zealand's approach to addressing homelessness came when Statistics New Zealand developed an official definition of homelessness in 2009. The background to this important development is outlined below.

2.2.1 International definitions of homelessness

During the 2000s, international attention increasingly focused on the need to define homelessness. It was recognised in Europe and Australia that having such a definition would allow homelessness to be consistently measured.[1]

In Europe, this led to the development of the European Typology of Homelessness and Housing Exclusion (ETHOS) definition in 2005.[2] This would later inform the development of the Statistics New Zealand definition. ETHOS identified four main categories of living situations that amounted to forms of homelessness across Europe:

- rooflessness (without a shelter of any kind, sleeping rough)
- houselessness (with a place to sleep but temporary in institutions or shelter)
- living in insecure housing (threatened with severe exclusion due to insecure tenancies, eviction, domestic violence)
- living in inadequate housing (in caravans on illegal campsites, in unfit housing, in extreme overcrowding).[3]

These categories were divided into 13 operational subcategories (such as people in women's shelters, insecure accommodation, and living in extreme overcrowding) which could be used for policy purposes.[4]

In Australia, social scientists Dr Chris Chamberlain and Dr David McKenzie had developed what they called a cultural definition of homelessness in 1992. This definition was based on a shared minimum community standard of living 'that people have the right to expect, in order to live according to the conventions and expectations of a particular culture'. The definition identified groups that fell below the minimum community standard, which was equivalent to a small rental flat (with a bedroom, living room, kitchen, and bathroom) with some security of tenure – and was considered the minimum that most people would achieve in the

1. Australian Bureau of Statistics, *Information Paper: A Statistical Definition of Homelessness* (Canberra, Australian Bureau of Statistics, 2012), p 9. https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/B4B1A5BC17CEDBC9CA257A6E00186823/$File/49220_2012.pdf; European Federation of National Organisations working with the Homeless (FEANTSA), 'ETHOS – European Typology on Homelessness and Housing Exclusion', https://www.feantsa.org/en/toolkit/2005/04/01/ethos-typology-on-homelessness-and-housing-exclusion, last modified 1 April 2005.

2. European Federation of National Organisations working with the Homeless (FEANTSA), 'ETHOS – European Typology on Homelessness and Housing Exclusion', https://www.feantsa.org/en/toolkit/2005/04/01/ethos-typology-on-homelessness-and-housing-exclusion, last modified 1 April 2005; see also doc B56(a) (Reina Penney), p 13.

3. European Federation of National Organisations working with the Homeless (FEANTSA), 'ETHOS – European Typology on Homelessness and Housing Exclusion', https://www.feantsa.org/en/toolkit/2005/04/01/ethos-typology-on-homelessness-and-housing-exclusion, last modified 1 April 2005.

4. European Federation of National Organisations working with the Homeless (FEANTSA), 'ETHOS – European Typology on Homelessness and Housing Exclusion: What is ETHOS', https://www.feantsa.org/download/ethos248421574874823988 8.pdf, no date.

private rental market.[5] The definition was often used in Australia to subsequently inform policy making,[6] and included the following model of homelessness, based on these shared community standards:

- Primary homelessness is defined as rough sleepers (using parks, the street, cars, derelict buildings, makeshift shelter);
- Secondary homelessness includes people who are transient between forms of temporary shelter (family, friends, hostels, night shelters);
- Tertiary homelessness includes people in housing which is unsuitable for their needs and has no security of tenure (including boarding houses);
- Marginal homelessness includes people in housing which is physically unsuitable (overcrowded, substandard).[7]

In 1999, Australia launched its first National Homelessness Strategy.[8] The strategic approach taken by the Federal Government encompassed prevention, early intervention, and assisting the transition out of homelessness. Two years later, in 2001, the Commonwealth Advisory Committee on Homelessness, Australia's leading advisory group on the subject, adopted Chamberlain and McKenzie's definition of homelessness.[9]

In 2008, Australia created another national strategy, *The Road Home*. This strategy recognised that mainstream services had different approaches to measuring homelessness due to varying definitional approaches.[10] As one of its first steps, it called for the development of a 'shared definition of homelessness'.[11] In response, the Australian Bureau of Statistics began the process of developing a

5. Australian Bureau of Statistics, *Information Paper – A Statistical Definition of Homelessness* (Canberra: Australian Bureau of Statistics, 2012), p 38, https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/B4B1A5BC17CEDBC9CA257A6E00186823/$File/49220_2012.pdf.

6. Steve Richards, *Homelessness in Aotearoa: Issues and Recommendations* (Wellington: New Zealand Coalition to End Homelessness, 2009), https://cdn-assets-cloud.aucklandcitymission.org.nz/acm/wp-content/uploads/2021/09/16104159/homelessness_in_aotearoa.pdf, accessed 8 May 2023, p 10.

7. Submission 3.1.236(a), p 5.

8. Submission 3.3.35 (claimant generic closing submissions on strategy and policy), p 42.

9. Submission 3.3.35 (claimant generic closing submissions on strategy and policy), pp 41–42; see also Homelessness Australia, 'About Homelessness', https://homelessnessaustralia.org.au/about-homelessness; Steve Richards, *Homelessness in Aotearoa: Issues and Recommendations* (Wellington: New Zealand Coalition to End Homelessness, 2009), https://cdn-assets-cloud.aucklandcitymission.org.nz/acm/wp-content/uploads/2021/09/16104159/homelessness_in_aotearoa.pdf, accessed 8 May 2023, p 10; Wellington City Council, *Te Mahana: Ending Homelessness in Wellington A Strategy for 2014–2020* (Wellington: Wellington City Council, 2014), p 4.

10. Commonwealth of Australia, *The Road Home: A National Approach to Reducing Homelessness* (Canberra: Department of Families, Housing, Community Services and Indigenous Affairs, 2008), p 60; see also doc C6 (George Hatvani), pp [7]–[8].

11. Commonwealth of Australia, *The Road Home: A National Approach to Reducing Homelessness* (Canberra: Department of Families, Housing, Community Services and Indigenous Affairs, 2008), p 44; doc C6 (George Hatvani), p [7].

new definition, based on what it said was a robust and transparent measurement method.[12] The bureau said the Chamberlain and McKenzie definition included assumptions about minimum shared community standards that lacked 'empirical validation'. It also described the definition as 'historically contingent', noting that views about homelessness had evolved over the 20 years since its creation. Consequently, the Australian Bureau of Statistics rejected Chamberlain and McKenzie's definition as impractical.[13] After consultation with the Homelessness Statistics Reference Group and an advisory sub-group, the bureau developed its official definition of homelessness in 2012.[14] It stated:

> When a person does not have suitable accommodation alternatives they are considered homeless if their current living arrangement:
> - is in a dwelling that is inadequate; or
> - has no tenure, or if their initial tenure is short and not extendable; or
> - does not allow them to have control of, and access to space for social relations.[15]

2.2.2 The New Zealand definition of homelessness

The New Zealand Coalition to End Homelessness adopted Chamberlain and McKenzie's definition after its establishment in 2007. The coalition coordinated advocacy on homelessness,[16] with a steering group comprising representatives of local government, as well as non-profit and faith-based organisations. Its aim was to end homelessness in New Zealand. Towards the end of the 2000s, the coalition was able to influence policy on homelessness by establishing links with local and central government. It also commissioned reports on homelessness. A key initial objective was to influence the definitional categories of homelessness which Statistics New Zealand was developing.[17]

Perhaps as an upshot of this, in early 2008 the Ministers of Housing and Statistics asked their respective agencies to develop an agreed definition of homelessness. A working group to undertake this task comprising officials from Statistics New

12. Australian Bureau of Statistics, *Information Paper – A Statistical Definition of Homelessness* (Canberra: Australian Bureau of Statistics, 2012), p 9, https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/B4B1A5BC17CEDBC9CA257A6E00186823/$File/49220_2012.pdf.

13. Australian Bureau of Statistics, *Information Paper – A Statistical Definition of Homelessness* (Canberra: Australian Bureau of Statistics, 2012), p 29, https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/B4B1A5BC17CEDBC9CA257A6E00186823/$File/49220_2012.pdf.

14. Australian Bureau of Statistics, *Information Paper – A Statistical Definition of Homelessness* (Canberra: Australian Bureau of Statistics, 2012), p 6, https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/B4B1A5BC17CEDBC9CA257A6E00186823/$File/49220_2012.pdf.

15. Australian Bureau of Statistics, *Information Paper – A Statistical Definition of Homelessness* (Canberra: Australian Bureau of Statistics, 2012), p 7, https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/B4B1A5BC17CEDBC9CA257A6E00186823/$File/49220_2012.pdf.

16. Chez Leggatt-Cook and Kerry Chamberlain, 'Houses with Elastic Walls: Negotiating Home and Homelessness within the Policy Domain', *Kōtuitui: New Zealand Journal of Social Sciences*, vol 10, issue 1 (2015), p 12.

17. Document D23(i) (Crown common bundle of documents, vol 10), pp 534–541; Chez Leggatt-Cook and Kerry Chamberlain, 'Houses with Elastic Walls: Negotiating Home and Homelessness within the Policy Domain', *Kōtuitui: New Zealand Journal of Social Sciences*, vol 10, issue 1 (2015), p 12.

Zealand, Housing New Zealand, and the Ministry of Social Development was established in July 2008.[18]

Another non-governmental initiative which may have been influential on policy-making at around this time was a documentary directed by Charlie Bleakley entitled *Putting Homelessness in Focus*, which was released in May 2008. It was researched and co-produced (with Bleakley) by Kate Amore, a technical witness for this inquiry and now a research fellow with He Kāinga Oranga – Housing and Health Research Programme, and funded by several city councils and Housing New Zealand. It called both for a better definition of homelessness and the collection and reporting of better homelessness data.[19] Then, in October 2008, researcher Steve Richards prepared the paper *Homelessness in Aotearoa: Issues and Recommendations* for the Coalition to End Homelessness. Stating that New Zealand had 'no clear picture or overview of the nature and extent of homelessness', the paper made a range of recommendations, many calling for Government action on homelessness.[20] The report stated that for homelessness to be eradicated, it would need a national Government strategy 'to combat the social exclusion which can lead to homelessness, and programmes which support people to maintain housing in the long-term'.[21]

As set out in chapter 1, the official definition of homelessness was published by Statistics New Zealand in July 2009 and is defined as living situations 'where people with no other options to acquire safe and secure housing are: without shelter, in temporary accommodation, sharing accommodation with a household, or living in uninhabitable housing'. Statistics New Zealand said having the definition would help measure and monitor homelessness for policy and service provision.[22] The agency had considered definitions from a range of other countries, before adopting a version of the ETHOS definition it said was suited to the New Zealand context.[23] The Crown has since acknowledged a lack of Māori involvement or Māori representation in the definition's development.[24]

18. Document D1 (Andrew Crisp), p 41.

19. Charlie Bleakley, Kate Amore, Simon Price, and Simon Burgin, *Putting Homelessness in Focus*, Threedollar Pictures, 2008. This documentary was drawn to our attention by memorandum 3.1.257(b) (Crown appendices, part 2 – thematic bibliography), p 32.

20. Steve Richards, *Homelessness in Aotearoa: Issues and Recommendations* (Wellington: New Zealand Coalition to End Homelessness, 2009), https://cdn-assets-cloud.aucklandcitymission.org.nz/acm/wp-content/uploads/2021/09/16104159/homelessness_in_aotearoa.pdf, accessed 8 May 2023, pp 3, 4–6. Although this paper dates from October 2008, it was not published until the following year. It was also drawn to our attention by memorandum 3.1.257(b) (Crown appendices, part 2 – thematic bibliography), p 32.

21. Steve Richards, *Homelessness in Aotearoa: Issues and Recommendations* (Wellington: New Zealand Coalition to End Homelessness, 2009), https://cdn-assets-cloud.aucklandcitymission.org.nz/acm/wp-content/uploads/2021/09/16104159/homelessness_in_aotearoa.pdf, accessed 8 May 2023, p 6.

22. Statistics New Zealand, *New Zealand Definition of Homelessness* (Wellington: Statistics New Zealand, July 2009), p 5; see also memo 3.1.215 (Crown), p 3.

23. Submission 3.3.35 (claimant generic closing submissions on strategy and policy), p 41.

24. Document D1(f) (Andrew Crisp), p 15; submission 3.3.65 (Crown closing submissions), p 77.

In 2013, Kate Amore and her Otago University colleagues used 2001 and 2006 census data to measure homelessness in their report *Severe Housing Deprivation: The Problem and its Measurement*.[25] They considered the Statistics New Zealand definition of homelessness weak for a number of reasons. First, it was a list of four categories without an explanation of 'what these categories have in common – that is, what *defines* the situations as homelessness'.[26] The Statistics New Zealand definition categorised people as homeless if their housing was inadequate in at least two of three key dimensions: physical, legal, and social. However, it also defined 'uninhabitable' housing, one of its elements of homelessness, as being housing that was deficient 'in the physical domain', which is just one of the three domains outlined above. The definition therefore appeared to be internally inconsistent.[27]

In their report, Amore and colleagues thus developed a broader definition of homelessness. Indeed, they argued that, because the term 'homelessness' was 'burdened by stereotype' and overly associated with just one aspect of the issue (rough sleeping), it should be replaced with the more precise phrase 'severe housing deprivation'. They defined severe housing deprivation as

> people living in severely inadequate housing due to a lack of access to minimally adequate housing (LAMAH). This means not being able to access a dwelling to rent, let alone buy. Minimally adequate housing is that which provides the basics in at least two of the core dimensions of housing adequacy – habitability, privacy and control, and security of tenure.[28]

Habitability meant having a fully enclosed structure and amenities such as drinking water, power, and a toilet; privacy and control meant the residents managed the property on a day-to-day basis; and security of tenure meant having the same termination of tenancy rights as people living in private rentals.[29] The

25. Kate Amore, Helen Viggers, Michael G Baker, and Philippa Howden-Chapman, *Severe Housing Deprivation: The Problem and its Measurement* (Wellington: Statistics New Zealand, 2013), p 7; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 64.

26. Kate Amore, Helen Viggers, Michael G Baker, and Philippa Howden-Chapman, *Severe Housing Deprivation: The Problem and its Measurement* (Wellington: Statistics New Zealand, 2013), p 2 (emphasis in the original); see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 67.

27. Statistics New Zealand, *New Zealand Definition of Homelessness* (Wellington: Statistics New Zealand, July 2009), pp 4, 6; Kate Amore, Helen Viggers, Michael G Baker, and Philippa Howden-Chapman, *Severe Housing Deprivation: The Problem and its Measurement* (Wellington: Statistics New Zealand, 2013), p 2; see also doc C14(a) (Philippa Howden-Chapman, Dr Kate Amore, and Helen Viggers bundle of documents), p 67.

28. Kate Amore, Helen Viggers, Michael G Baker, and Philippa Howden-Chapman, *Severe Housing Deprivation: The Problem and its Measurement* (Wellington: Statistics New Zealand, 2013), p 7; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 64.

29. Kate Amore, Helen Viggers, Michael G Baker, and Philippa Howden-Chapman, *Severe Housing Deprivation: The Problem and its Measurement* (Wellington: Statistics New Zealand, 2013),

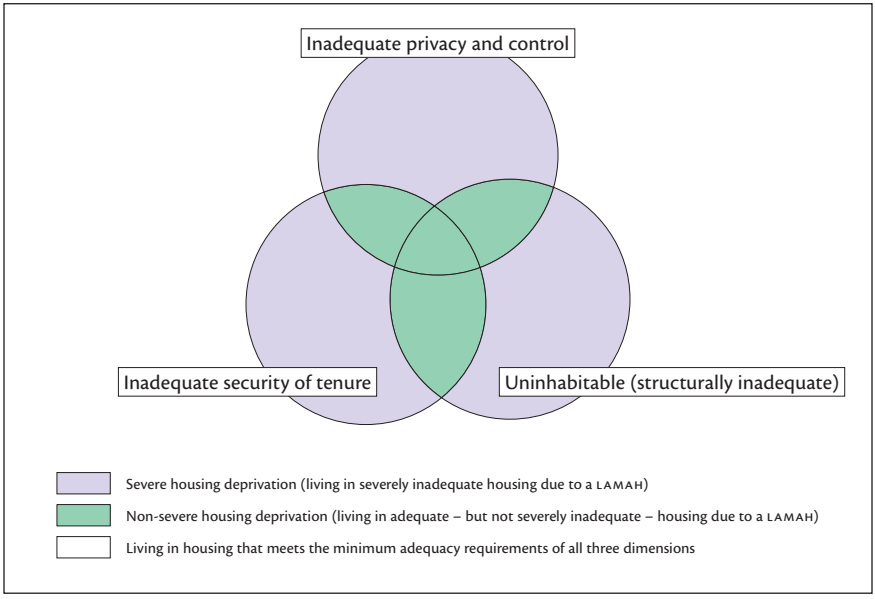


Figure 1: Conceptual model of severe housing deprivation. Note that this figure relates to the three core dimensions of housing adequacy only. People may be deprived in other dimensions of housing adequacy, such as affordability.

Data source: Adapted from Edgar (2009), p 16.

authors stated that severe housing deprivation was made up of two criteria: a person was living in housing that was severely inadequate (and below the minimum adequacy standard); and this was due to their lack of access to housing meeting the minimum adequacy standard (as opposed to living in the situation by choice). Figure 1, from Amore and colleagues' report, shows a conceptual model depicting severe housing deprivation.[30]

Amore and colleagues' definition of severe housing deprivation was clearly an advance on the 2009 Statistics New Zealand definition. Given, however, that the term homelessness retains widespread currency, notably for claimants in this inquiry, we have used the two terms interchangeably in this report. All references to homelessness, therefore, should be taken to reflect Amore and colleagues' definition. We note also that, like the Statistics New Zealand definition, nor did the

p 5; see also doc c14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 70.

30. Figure 1 is figure 1 from Kate Amore, Helen Viggers, Michael G Baker, and Philippa Howden-Chapman, *Severe Housing Deprivation: The Problem and its Measurement* (Wellington: Statistics New Zealand, 2013), p 5; see also doc c14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 70.

new definition focus specifically on Māori homelessness or the social and cultural dimensions of severe housing deprivation.

There is some confusion about whether the Crown embraced the definition of severe housing deprivation for the purposes of this inquiry. On 2 April 2020 Crown counsel submitted that the Crown had adopted the definition used 'for the 2018 Severe Housing Deprivation estimate', but then set out the wording of the 2009 definition.[31] In any event, in closing submissions the Crown accepted that the severe housing deprivation definition, classification, and methodology developed by Amore and colleagues was 'now the primary method for measuring homelessness in Aotearoa New Zealand'.[32]

2.3 Quantifying Homelessness in New Zealand Today

Since 2009, although Māori have represented around 15 to 17 per cent of the national population, they have made up just over one-third of all New Zealanders who are severely housing deprived.[33] Or, as Crown officials advised the Ministers of Housing and Social Development in August 2019, the statistics show that Māori are five times more likely to be homeless than Pākehā (see our discussion of these prevalence rates in section 2.3.1).[34]

While both these statements provide some indication of the extent of the problem, neither represents a truly accurate or reliable summary of the extent of Māori homelessness. They mask a number of conundrums and challenges relating to under-reporting, the consistency of data collection and reporting across different agencies and in different periods, varied approaches to identifying and reporting ethnicity, and indeed – as we have seen – the very definition of homelessness itself. All these factors make it hard, if not impossible, to capture the realities of homelessness in a simple snapshot. As housing researchers Alan Johnson, Professor Philippa Howden-Chapman, and Shamubeel Eaqub stated in their 2018 report *A Stocktake of New Zealand's Housing*, the Ministry of Social Development has acknowledged there are 'a significant number of homeless households . . . but the scale of this problem is unknown'.[35]

31. Memorandum 3.1.215 (Crown), pp 2–3.
32. Submission 3.3.65 (Crown closing submissions), p 77.
33. Kate Amore, Helen Viggers, Michael G Baker, and Philippa Howden-Chapman, *Severe Housing Deprivation: The Problem and its Measurement* (Wellington: Statistics New Zealand, 2013), p 7; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, Helen Viggers bundle of documents), p 64; as noted in section 2.3.3, definitional issues mean that the terms 'homelessness' and 'severe housing deprivation' are used interchangeably throughout this chapter.
34. Document C12(a) (Shiloh Groot appendices), p 21.
35. Alan Johnson, Philippa Howden-Chapman, and Shamubeel Eaqub, *A Stocktake of New Zealand's Housing* (Wellington: Ministry of Business, Innovation and Employment, 2018), p 35; see also submission 3.3.33(a) (claimant generic closing submissions on data collection appendices), p [71]. Alan Johnson appeared as a technical witness in this inquiry and at the time of hearing was a senior policy analyst in the Salvation Army's Social Policy and Parliamentary Unit. Professor Philippa Howden-Chapman is a public health specialist and Kāinga Ora board member and also appeared as a technical witness in the inquiry. Shamubeel Eaqub is an economist.

In this section, we examine the most comprehensive data on homelessness in New Zealand: the results of the national Census of Population and Dwellings. We restrict ourselves to the two most recent censuses, 2013 and 2018, as they are the two that fall within our time period. We discuss issues relating to data collection and monitoring of Māori homelessness, noting how those issues have impacted the development of the policies and services which are the subject of claims in this inquiry. Lastly, we examine the most recent data from the social housing register, which is often used to indicate housing demand.

2.3.1 Census

Currently, the census provides the only nationwide data on all people in all types of living situations.[36] It is, therefore, the 'key dataset for measuring severe housing deprivation'.[37]

In 2020, after making improvements to how they conducted their earlier analysis of 2001 and 2006 census data, Amore and colleagues calculated the severely-housing-deprived population from the 2013 and 2018 censuses.[38] Their results were created from a number of different sources including the Integrated Data Infrastructure,[39] a pre-release of the 2018 census confidentialised unit record files, transitional housing data from the Ministry of Housing and Urban Development, and data sourced directly from emergency and transitional housing providers.[40]

Amore and colleagues found that in 2013, 37,289 people were severely housing deprived in New Zealand: a prevalence rate of 87.9 per 10,000 people. Of these, 4,122 (11.1 per cent) were without shelter; 8,447 (22.7 per cent) were living in temporary accommodation; and 24,720 (66.3 per cent) were sharing accommodation

36. Kate Amore, Helen Viggers, and Philippa Howden-Chapman, *Severe Housing Deprivation in Aotearoa New Zealand, 2018* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2020), p 5; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 269.

37. Kate Amore, Helen Viggers, Michael G Baker, and Philippa Howden-Chapman, *Severe Housing Deprivation: The Problem and its Measurement* (Wellington: Statistics New Zealand, 2013), p 10; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 75.

38. Kate Amore, Helen Viggers, and Philippa Howden-Chapman, *Severe Housing Deprivation in Aotearoa New Zealand, 2018* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2020), p 5; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 269.

39. Statistics New Zealand describes the Integrated Data Initiative as a large research database holding 'de-identified microdata about people and households', https://www.stats.govt.nz/integrated-data/integrated-data-infrastructure, accessed 10 May 2023; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 309.

40. Kate Amore, Helen Viggers, and Philippa Howden-Chapman, *Severe Housing Deprivation in Aotearoa New Zealand, 2018* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2020), p 2; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 266.

Broad living situation (New Zealand Definition of Homelessness category)		Specific living situation	2013 (revised)		2018		Change in number of people	Average change in prevailing rate per 10,000
			Number of people	Prevailing rate per 10,000 people*	Number of people	Prevailing rate per 10,000 people*		
1 Without shelter		Roofless/rough sleeper	30	0.1	195	0.4	+165	+0.3
		Improvised dwelling	1,425	3.4	1,311	2.8	−114	−0.6
		Mobile dwelling	2,667	6.3	2,016	4.3	−651	−2.0
		Subtotal	**4,122**	**9.7**	**3,522**	**7.5**	−600	−2.2
2 Temporary accommodation	Emergency and transitional accommodation (NGO-run)	Night shelter	26	0.1	69	0.1	+43	0.0
		Women's refuge	30	0.1	96	0.2	+66	+0.1
		Other accommodation for homeless people	493	1.2	1,530	3.3	+1.037	+2.0
		Subtotal	**549**	**1.3**	**1,695**	**3.6**	+1,146	+2.3
	Commercial accommodation	Camping ground/motor camp	1,711	4.0	1,431	3.0	−280	−1.0
		Boarding houses, hotels, motels, vessels	6,144	14.5	4,396	9.4	−1,748	−5.1
		Subtotal	**7,855**	**18.5**	**5,827**	**12.4**	−2,028	−6.1
	Marae		43	0.1	45	0.1	+2	0.0
	Subtotal (temporary accommodation)		**8,447**	**19.9**	**7,567**	**16.1**	−880	−3.8
3 Sharing accommodation (temporary resident in a severely crowded private dwelling)			24,720	58.3	30,555	65.0	+5,835	+6.7
Total severely housing deprived			**37,289**	**87.9**	**41,644**	**88.6**	+4,355	+0.7

* Denominator populations are New Zealand usual residents in the corresponding year.

Table 1: Severely housing deprived population by housing deprivation category (2013 and 2018 category)

Sources: Data analysed here were sourced from Stats NZ, HUD, and emergency housing providers.

as a temporary resident in a severely crowded permanent private dwelling.[41] The specific living situations are provided in detail in table 1.[42]

As can be seen, in 2018 the number of severely housing deprived people had risen to 41,644 (or 88.6 per 10,000 people): 3,522 (8.45 per cent) of these were without shelter; 7,567 (18.2 per cent) were in temporary accommodation; and 30,555 (73.4 per cent) were sharing accommodation as temporary residents in severely crowded permanent private dwellings – a significant proportionate rise from 2013.[43] We note that the analysis conducted by Amore and her colleagues in 2013, of the two previous censuses, had identified the rate of severe housing deprivation in 2001 as 77.4 per 10,000 people and in 2006 as 84.3 per 10,000 people.[44] When placed alongside the 2013 and 2018 results, this shows a pattern of steadily worsening homelessness across the best part of two decades, although we note that comparison across censuses is difficult because of changing methodologies and rates of enumeration. As Helen Viggers, Kate Amore, and colleagues noted in 2021, '[s]cope changes, census operational difficulties, and quality limitations inherent in surveying people experiencing homelessness or housing lacking basic amenities mean comparisons over time are impossible or inappropriate.'[45]

The 2018 census was the first to measure housing quality and thus provide data on how many people were in 'uninhabitable housing', the fourth category of homelessness. Amore and her colleagues reported on this dimension in 2021, noting that there were 62,019 people living in severe housing deprivation through uninhabitable housing, albeit with 1,629 of these people already counted among those

41. Kate Amore, Helen Viggers, and Philippa Howden-Chapman, *Severe Housing Deprivation in Aotearoa New Zealand, 2018* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2020), p 22; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 286.

42. Table 1 is table 11 in Kate Amore, Helen Viggers, and Philippa Howden-Chapman, *Severe Housing Deprivation in Aotearoa New Zealand, 2018* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2020), p 22; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 286. Note that the original title of this table has been abbreviated for clarity.

43. Kate Amore, Helen Viggers, and Philippa Howden-Chapman, *Severe Housing Deprivation in Aotearoa New Zealand, 2018* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2020), p 22; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), pp 268, 286.

44. Kate Amore, Helen Viggers, Michael G Baker, and Philippa Howden-Chapman, *Severe Housing Deprivation: The Problem and its Measurement* (Wellington: Statistics New Zealand, 2013), p 31; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 96.

45. Helen Viggers, Kate Amore, and Philippa Howden-Chapman, *Housing that Lacks Basic Amenities in Aotearoa New Zealand, 2018: A Supplement to the 2018 Census Estimate of Severe Housing Deprivation* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2020), p 13; see also doc C14(b) (Helen Viggers, Kate Amore, and Philippa Howden-Chapman), p 13.

suffering severe housing deprivation through household crowding.[46] Combined with the numbers of those without shelter, in temporary accommodation, and sharing accommodation, this meant that the total count of people experiencing severe housing deprivation at the 2018 census was 102,123, or 217.3 per 10,000 people.[47]

In terms of ethnicity, Amore and colleagues reported in 2016 that, at the 2013 census, New Zealand Europeans comprised 34 per cent of the severely housing deprived population, representing four people in every 1,000 of the New Zealand European population. Māori comprised 32 per cent, representing 21 people per 1,000 of the Māori population.[48] We assume this formed the basis for officials' advice to Ministers in August 2019 that Māori were five times as likely to be homeless as Pākehā. At the 2018 census, across the first three categories of severe housing deprivation (without shelter, temporary accommodation, and sharing accommodation), the New Zealand European prevalence rate was fairly constant, at 41.2 per 10,000, but the Māori rate had reduced, to 166 per 10,000.[49] At first glance, this might suggest an improvement in rates of Māori homelessness between 2013 and 2018. However, the result is much more likely to stem from the serious underenumeration of the Māori population at the 2018 census. Workarounds to address these gaps could not provide housing information for 330,000 people, around half of whom were Māori and Pacific peoples. As Amore and colleagues put it in 2021, these '"missing" records are likely to particularly affect the "sharing accommodation" and "uninhabitable housing" categories of severe housing deprivation among Māori and Pacific peoples'.[50]

46. Helen Viggers, Kate Amore, and Philippa Howden-Chapman, *Housing that Lacks Basic Amenities in Aotearoa New Zealand, 2018: A supplement to the 2018 Census Estimate of Severe Housing Deprivation* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2020), pp 9–10; see also doc C14(b) (Helen Viggers, Kate Amore, and Philippa Howden-Chapman), pp 9–10.

47. Kate Amore, Helen Viggers, and Philippa Howden-Chapman, *Severe Housing Deprivation in Aotearoa New Zealand, 2018: June 2021 Update* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2021), p 15.

48. Kate Amore, *Severe Housing Deprivation in Aotearoa/New Zealand: 2001–2013* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2016), p 13; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers bundle of documents), p 156.

49. Kate Amore, Helen Viggers, and Philippa Howden-Chapman, *Severe Housing Deprivation in Aotearoa New Zealand, 2018: June 2021 Update* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2021), p 17.

50. Helen Viggers, Kate Amore, and Philippa Howden-Chapman, *Housing that Lacks Basic Amenities in Aotearoa New Zealand, 2018: A Supplement to the 2018 Census Estimate of Severe Housing Deprivation* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2020), p 14; see also doc C14(b) (Helen Viggers, Kate Amore, and Philippa Howden-Chapman), p 14. Across all four categories of severe housing deprivation, the Māori prevalence rate was 363.6 per 10,000 people and the New Zealand European rate was 107.5 per 10,000 people. Again, for the reasons explained, the Māori numbers are likely to be significantly undercounted: Kate Amore, Helen Viggers, and Philippa Howden-Chapman, *Severe Housing Deprivation in Aotearoa New Zealand, 2018: June 2021 Update* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2021), p 34.

2.3.2 Different ways of counting ethnicity

In 2005, Statistics New Zealand developed a statistical standard for ethnicity that aimed to ensure consistency across surveys and administrative data collections and to allow for comparability.[51] Its preferred approach to counting ethnicity was using the total count rather than priority count method.

When data is collected using the total count method, the total output indicates all responses given for each ethnic group. The total count of all ethnicities is therefore greater than the number of people reporting them as some people have multiple ethnicities. Statistics New Zealand said this method had the advantage of identifying all people who affiliate with one specific ethnic group.[52]

The other way of reporting on ethnicity is using the priority count method where a single output is used, such as Māori. Using this method, people are allocated to a single ethnic group 'in an order of priority even if they identify with more than one ethnicity'.[53] However, as the priority count method uses only the 'top' ethnicity when reporting, it can negatively impact the count of those who report having multiple ethnicities. For example, someone who reports being Māori, but who also identifies with other ethnicities, would be counted as Māori only.[54]

In 2004, Statistics New Zealand acknowledged that adopting its preferred total count method across all agencies would mean its own collections and those of other agencies would need to change the output of data to meet these standards.[55] As it stands, this need for standardisation remains. Community housing providers have their own varying ways of collecting and reporting on ethnicity. Kāinga Ora continues to use priority count while the Ministry of Social Development signalled it was changing to total count from 10 December 2021.[56]

Another factor to consider is that an ethnic group like Māori is not homogeneous. It includes those who identify only as Māori and those whose Māori ethnicity is expressed as part of a more complex identity. Those identifying solely as Māori tend to have worse socio-economic outcomes than, say, those who identify as both Māori and European (sole Māori and Māori and European being by far the two largest subgroups within the Māori ethnic group).[57]

51. Statistics New Zealand, *Statistical Standard for Ethnicity* (Wellington, no date. This standard is regularly updated), p 2.

52. Statistics New Zealand, *Report of the Review of the Measurement of Ethnicity* (Wellington: Statistics New Zealand, 2004), p 14.

53. Ministry of Social Development, 'Improving How we Report Ethnicity', https://www.msd.govt.nz/about-msd-and-our-work/tools/how-we-report-ethnicity.html, last modified no date.

54. Statistics New Zealand, *Report of the Review of the Measurement of Ethnicity* (Wellington: Statistics New Zealand, 2004), p 13.

55. Statistics New Zealand, *Report of the Review of the Measurement of Ethnicity* (Wellington: Statistics New Zealand, 2004), pp 13–14.

56. Ministry of Social Development, 'Improving how we Report Ethnicity', https://www.msd.govt.nz/about-msd-and-our-work/tools/how-we-report-ethnicity.html, last modified no date.

57. For examples of scholarship examining this issue, see Simon Chapple, 'Maori Socio-Economic Disparity', *Political Science*, vol 52, no 2 (2000), pp 101–115; Tahu Kukutai, 'The Problem of Defining an Ethnic Group for Public Policy: Who is Māori and Why Does it Matter?', *Social Policy Journal of New Zealand*, vol 23 (2004), pp 86–108.

The distinction between 'social housing' and 'public housing'

The traditional term for social or public housing in New Zealand is state housing, emphasising the provision of low-cost rental housing by the State. The Manager Housing Policy at the Ministry of Social Development, Alexander McKenzie, explained to us that the term began to change under the fifth National Government to 'social housing'. This reflected the shift in model from one where the Government 'provided social housing primarily through ownership' towards one where it purchased services from a broader pool of providers.[1] An example of this can be found in the name of the Social Housing Reform Programme, which commenced in 2010. In turn, the subsequent Labour Government has preferred the term 'public housing', which has emphasised its focus on expanding the provision of housing by what is now known as Kāinga Ora.[2]

The result of these changes has been the appearance of terminological inconsistency. It is standard practice today to refer to both the social housing register and the Public Housing Plan, for example; likewise, witnesses often referred variously to both social housing and public housing. There is logic to this, however, if one considers that 'social housing' is either Kāinga Ora or community housing (as per section 2(1) of the Public and Community Housing Management Act 1992), while 'public housing' is housing that is let by Kāinga Ora or the Crown (as per section 5(1) of

1. Transcript 4.1.7, p 288.
2. Transcript 4.1.7, p 287.

At the request of the Tribunal, in 2021 Helen Viggers and Dr Amore prepared data showing the number of Māori who were severely housing deprived by multiple ethnicity. Of respondents who identified as Māori only, 6.7 per cent were severely housing deprived, while 4.7 per cent of respondents who identified as Māori and other ethnicities were severely housing deprived. For respondents who identified as Māori and European, only 2.7 per cent fell into that category. The group that fared the worst in severe housing deprivation were those who identified as Māori and Pacific peoples, of whom 8.9 per cent were severely housing deprived. Conversely, only 2 per cent of all non-Māori identified as severely housing deprived.[58] As these numbers indicate, the use of multiple ethnicity data – which the priority count approach does not collect – can reveal a much more complex picture of homelessness across and within ethnic groups.

58. Document D31 (Helen Viggers and Kate Amore), p [2].

the Kāinga Ora–Homes and Communities Act 2019). Indeed, Alexander McKenzie explained that social housing had 'a slightly wider definition than public housing',[3] and the chief executive of the Ministry of Housing and Urban Development, Andrew Crisp, likewise said that public housing was 'part of social housing'.[4] Confusingly, though, Crown witnesses frequently referred to what we understand formally to be the 'social housing register' as the 'public housing register',[5] which may reflect the current government's emphasis on 'public housing'.

Either way, 'social housing' appears to be the more encompassing term. We have generally used it in this report, particularly given our focus on the social housing register, but we have also used 'public housing' where the context and government emphasis makes that appropriate.

We note, though, that while council housing is a form of social housing, we do not include it in our use of 'social housing' in this report. This is because council tenants are not drawn from the social housing register and councils do not receive the income-related rent subsidy in regard to their tenants.[6]

3. Transcript 4.1.7, p 287.
4. Transcript 4.1.7, p 59.
5. Transcript 4.1.7, pp 51 (Jeremy Steele), 66 (Andrew Crisp), 287 (Alexander McKenzie), 295 (Edward Ablett-Hampson), 377 (Marama Edwards).
6. Transcript 4.1.7, p 287. The income-related rent subsidy 'top[s] up the tenant contribution to residential rental payments so the income public housing providers receive is broadly the equivalent of a market rent', doc D1(b) (Andrew Crisp evidential factsheet), p 7.

2.3.3 Housing register data

One commonly accepted indicator of housing demand is the social housing register or 'waiting list'. It has been administered by the Ministry of Social Development since 2014, when this function was transferred from Housing New Zealand.[59]

According to Kāinga Ora's technical definition – which we adopt in this report – the social housing register comprises both the 'housing register' and the 'transfer register'. The housing register is a waiting list of applicants with a 'severe and persistent housing need' who have met the eligibility criteria for social housing.[60] Houses are then allocated to those on the list, in order of priority.[61] The transfer register records tenants eligible to transfer from social housing they already occupy to another social housing property.[62] We note here that most claimant,

59. Alan Johnson, Philippa Howden-Chapman, and Shamubeel Eaqub, *A Stocktake of New Zealand's Housing* (Wellington: Ministry of Business, Innovation and Employment, 2018), p 28; see also submission 3.3.33(a) (claimant generic closing submissions on data collection appendices), p [64].
60. Document D23(d) (Crown common bundle of documents, vol 5), pp 2492–2493.
61. Document B17(a) (Scott Figenshow appendices), p 23.
62. Document D23(d) (Crown common bundle of documents, vol 5), p 2492.

technical, and Crown witnesses referred to the housing register and the social housing register interchangeably, when in fact they are not the same; as Kāinga Ora's definition indicates, only the social housing register takes account of people waiting for transfer.[63] In many cases, the reason they are waiting for transfer will be because their housing is unsuitable for their needs. In this sense, they too are in need of more appropriate social housing

Below we outline housing register numbers. Importantly, these numbers are likely to be an underestimate of those needing social housing for a number of reasons. As noted by Johnson and colleagues in their 2018 report, housing demand is difficult to measure. Because measuring demand relies on the administration of an application and review process, some people who need housing but are not linked in with housing services will not be counted in any assessment of demand.[64] A similar consensus was reached in the 2016 cross-party report *Ending Homelessness in New Zealand*. This report was launched by the Green, Labour, and Māori Parties after the National Government turned down Opposition requests for a parliamentary inquiry into homelessness. The three parties stated that, while the housing register was often used as a measure of homelessness, it was an 'underestimate of the level of need because tight criteria and ineffective provision mean not all of those in housing need can or will qualify for this register'.[65]

On the other hand, Ministry of Social Development witness Edward Ablett-Hampson explained that some people on the housing register are not strictly homeless or housing deprived. Rather, their accommodation may simply be quite unsuitable for their pressing needs.[66] As such, it is difficult to ascertain at any one time exactly what proportion of people on the housing register are homeless or severely housing deprived, or what share of the homeless or severely housing deprived are on the register. Nonetheless, it is generally accepted that most of those on the register are in severely inadequate housing. The register remains one of the clearest and most regularly updated sources on demand for more suitable housing and thus the extent of housing deprivation.

In December 2021, at our request, Kāinga Ora and the Ministry of Social Development provided throughput data and snapshot data from 2000 to 2021. Throughput data refers to the total number of individual applicants (that is, the

63. Exceptions to this included Ministry of Social Development witness Edward Ablett-Hampson, who explained the difference between the social housing register and the housing register (see transcript 4.1.7, p 295), and Kāinga Ora chief executive Andrew McKenzie, who made the distinction clearly in his evidence (see doc D3 (Andrew McKenzie), p 30).

64. Alan Johnson, Philippa Howden-Chapman, and Shamubeel Eaqub, *A Stocktake of New Zealand's Housing* (Wellington: Ministry of Business, Innovation and Employment, 2018), p 28; see also submission 3.3.33(a) (claimant generic closing submissions on data collection appendices), p [64]. To illustrate the point, Johnson, Howden-Chapman, and Eaqub further noted (on p 35) that they had obtained data from a sample of emergency housing providers that showed a 'turnaway rate' from these providers of 82 to 91 per cent. That is, 'for every 10 homeless people who approached them, requiring housing, only 1 to 2 people could be accommodated'.

65. Document D23(a) (Crown common bundle of documents, vol 2), p 122.

66. Transcript 4.1.7, p 380.

primary tenant applications) passing through the housing register in a given calendar year. These numbers are different to 'snapshot' data, that show the number of people in that system at one specific point in time. Throughput data acknowledges that some people will be on the housing register for short periods, and that a single moment in time (a 'snapshot') may miss the scale of the issue. Kāinga Ora provided throughput data from 2000 to 2015 inclusive,[67] while the Ministry of Social Development provided the equivalent data from 2015 to 2021.[68] At our request, Kāinga Ora and the Ministry of Social Development also provided quarterly snapshot data of primary applicants on the housing register from 2000 to 2021.[69] Given the timeframe agreed for our report, we discuss throughput and snapshot data from 2009 onwards.[70]

The throughput data graphed in figure 2 shows that the number of primary applicants dropped from 2009 to 2012, with Māori accounting for around one-third of applicants during this time.[71] From 2012 (when the number of primary applicants was at its lowest) to 2021, the number of primary applicants rose from 8,458 to 48,102.[72] These numbers are indicated on figure 2. The dotted lines on the graph, between 2014 and 2016, indicate a discontinuity in the data supplied for 2015.[73] Māori rose from just over one-third of primary applicants in 2012 to just over half of all primary applicants in 2021.[74] These proportions are shown in figure 3, with the dotted lines representing the 2015 gap.

Quarterly snapshot data provided by Kāinga Ora and the Ministry of Social Development showed that the total number of primary applicants on the housing

67. While Kāinga Ora hold the social housing register data from 2000 to 2015 (and have done since 2019 when Kāinga Ora became a new entity), the data were collected at the time by Housing New Zealand.

68. The Ministry of Social Development took over administration of the register from Housing New Zealand in 2015. To our knowledge, no issues of data comparability arise from this change.

69. Document D42 (Kāinga Ora and Ministry of Social Development statistics), pp 1–5. Please note this is housing register data only and does not include applicants on the transfer register and so is not a complete count of the social housing register.

70. The proportion of total applicants whose ethnicity was not recorded fluctuated considerably over this period but, from our calculations, was never higher than 5.5 per cent (in 2010), and was in fact negligible in 2013. In 2020 and 2021 it was around 3.5 per cent. These applicants are excluded.

71. Document D42 (Kāinga Ora and Ministry of Social Development statistics), p 4.

72. Document D42 (Kāinga Ora and Ministry of Social Development statistics), pp 4, 5. If those for whom no ethnicity was recorded were included, these totals were 8,632 and 49,866 respectively.

73. The 2015 Kāinga Ora data provided was from January 2015 to July 2015 while the Ministry of Social Development data was from August 2015 to December 2015. While the totals from these two figures would provide the maximum possible figures for that year, there will be applicants who were counted twice, due to applying in the first and second part of the year or because their application covered July and August of 2015: see submission 3.2.304 (Crown filing remaining annual housing register data), p 2.

74. Document D42 (Kāinga Ora and Ministry of Social Development statistics), p 5.

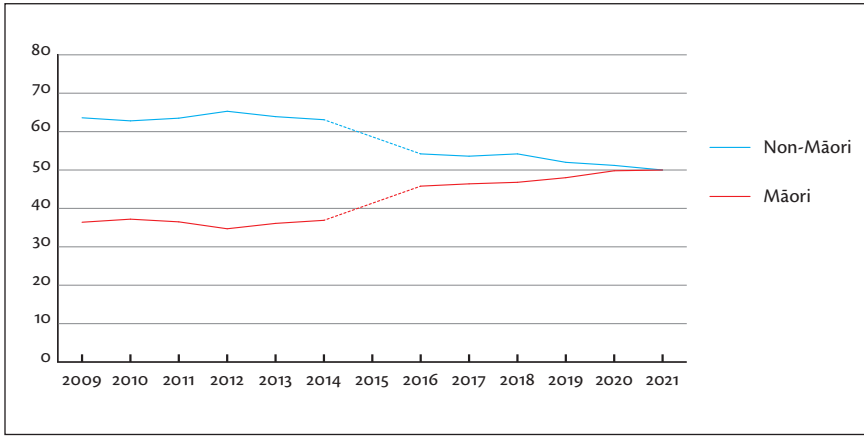


Figure 2: Throughput data showing the proportion of Māori and non-Māori primary applicants on the housing register by calendar year, 2009–21

register dropped from 7,247 in December 2009 to 2,989 in December 2012.[75] As figure 3 illustrates (the significance of the shaded area and lines is explained below), from 2012 to 2015 the total number of primary applicants on the housing register remained relatively consistent. After December 2017, the number of primary applicants quadrupled, with snapshot numbers jumping from 6,048 in December 2017 to 24,597 in December 2021.[76] Gareth Kiernan, a technical witness for this inquiry, estimated in February 2021 that based on the growth of the housing register, 'a building programme of about 17,700 State houses [was] needed to return the waiting list to its 2015 levels'.[77]

Consistent with throughput data, the snapshot data showed the proportion of Māori primary applicants rose from 30.8 per cent in December 2009 to over 50 per cent of all housing register applicants in 2021, as shown in figure 4. Furthermore, since 2015 the number of Māori primary applicants grew more than that of all other ethnicities combined.[78] From 2017 to 2021, when the overall numbers quadrupled, the proportion of Māori primary applicants increased from 45.8 per cent to 52.4 per cent.[79]

75. Document D42 (Kāinga Ora and Ministry of Social Development statistics), p 2. Please note this is housing register data only and does not include applicants on the transfer register and so is not a complete count of the social housing register. If those for whom no ethnicity was recorded were included, the December 2009 total was 7,522. The December 2012 total was the same, as there was no applicant without recorded ethnicity that quarter.

76. Document D42 (Kāinga Ora and Ministry of Social Development statistics), pp 2–3. If those for whom no ethnicity was recorded were included, these totals were 6,180 and 25,524 respectively.

77. Document C3(a) (Gareth Kiernan), p 11. Mr Kiernan also stated that the Government would need to build an additional 37,000 State houses to reclaim the 5.4 per cent proportion of the housing stock it made up in 1991: doc C3(a) (Gareth Kiernan), p 13.

78. Document C3(a) (Gareth Kiernan), p 11.

79. Document D42 (Kāinga Ora and Ministry of Social Development statistics), pp 1–3.

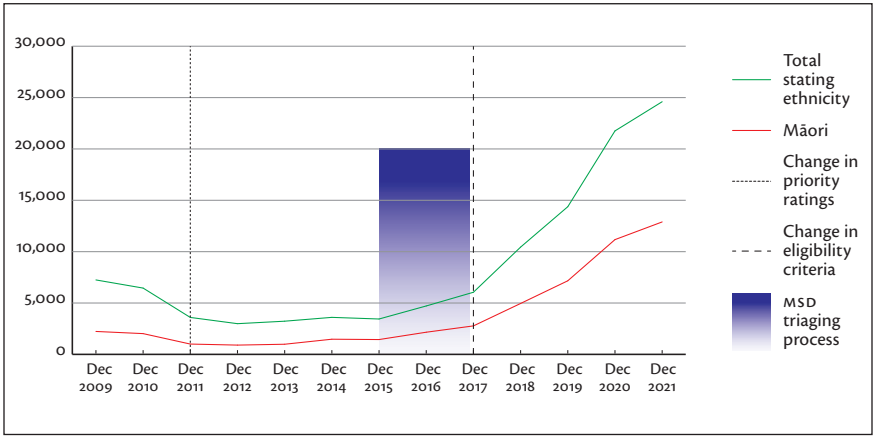


Figure 3: Snapshot data showing the number of Māori and total primary applicants on the housing register, December 2009 to December 2021

Aside from the broader and systemic issues which have manifestly affected rises and falls in the numbers of applicants on the housing register – which we have of course had to defer discussion of until a later report – there are several more specific factors that we can comment upon. One of these was the change in eligibility criteria. Originally, the housing register used an alphabetical ranking system from A to D, with A and B priority applicants having the greatest need.[80] However, in 2011, the Government changed its priority ratings and applicants in the lowest priority groupings – C and D – were no longer eligible for social housing.[81] This point is indicated with a black dotted vertical line in figure 3 above.

Another factor which might have affected numbers on the list was a 'triaging' process that took place for applicants from 2015 to 2017, indicated by a blue shaded area in figure 3. This lengthy process, introduced by the National-led Government of the day, required people hoping to go on the register to phone the Ministry of Social Development for a 'triage' or 'screening' assessment before being permitted to make an application. No records were kept of the number of times people were turned away.[82] In 2017, the Labour-led Government introduced administrative changes making it easier for people to get on the register, which is indicated with a black vertical line in figure 3.[83] Alan Johnson said this change probably influenced the rapid increase in numbers. He added that caution was needed when inter-

80. Document D3 (Andrew McKenzie), p 71.

81. Up until then the four priority ratings were: A – at risk; B – serious housing need; C – moderate need; and D – low level need, see doc B17(a) (Scott Figenshow appendices), p 23 for more information.

82. Transcript 4.1.7, pp 427–428.

83. We are unaware whether the new Government's liberalisation of access marked the moment triaging came to a conclusion, or whether there was a small gap in between. We have therefore placed the black vertical line adjacent to the blue shaded area. It may be that this line should be exactly on the edge of this area.

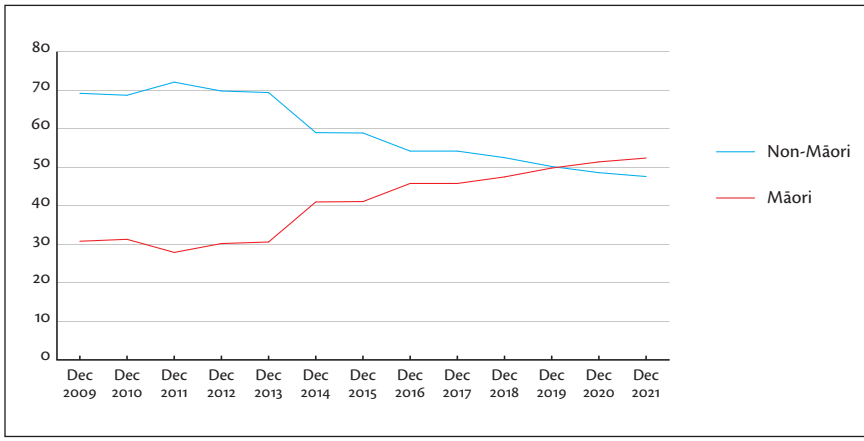


Figure 4: Snapshot data showing the proportion of Māori and non-Māori primary applicants on the housing register, December 2009 to December 2021

preting the figures, given that social housing demand had been subdued under the National Government while eligibility had been liberalised under Labour. Regardless, he noted that demand had grown by 200 per cent for Māori and 150 per cent for non-Māori from March 2018 to September 2020.[84]

2.3.4 Other data sources

Aside from the census and the housing register, we should acknowledge that there have been other attempts to quantify the number of homeless in certain locations. From 2004 to 2016, for example, homelessness agencies in Auckland regularly counted the number of people living without shelter in the central city (within a three-kilometre radius of the Sky Tower). This showed numbers of around 60 to 90 from 2004 until 2013, and then a steep increase to reach around 175 at the 2016 count.[85] This rise is generally consistent with what we know from the trends apparent in the census and housing register data. A wider count across the Auckland region in September 2018 counted 336 people living without shelter, which was assumed to indicate a 'validation-adjusted' number of 800.[86] A subset of the 336 (53 people) participated in a survey, of whom 42.7 per cent were Māori. While

84. Document C2 (Alan Johnson), p [4]. Mr Johnson based these calculations off there being 2,543 Māori and 4,164 non-Māori on the register in March 2018, and 10,590 Māori and 10,089 non-Māori on it in September 2020; see also D42 (Kāinga Ora and Ministry of Social Development statistics), p 3.

85. Housing New Zealand, *Ira Mata, Ira Tangata: Auckland's Homelessness Count Report: Point in Time Count 2018* (Auckland: Housing First Auckland and Auckland Council, 2018), p 17; see also doc C2 (Alan Johnson), p [5].

86. Housing New Zealand, *Ira Mata, Ira Tangata: Auckland's Homelessness Count Report: Point in Time Count 2018* (Auckland: Housing First Auckland and Auckland Council, 2018), p 7; see also doc C2 (Alan Johnson), p [5].

this appeared to show a high level of over-representation, Housing First Auckland acknowledged that 'the small sample size means the results do not provide a statistically reliable description of the homeless population.'[87]

2.4 The Crown's Housing Policy (2010–15)

From 2010 to 2015, the Crown made some attempts to address housing at a national level, but not all focused on Māori housing or homelessness. The most significant initiatives are summarised here. As we will see later in the chapter, it was not until 2020 that the Government had an actual homelessness strategy.

2.4.1 The Housing Shareholders Advisory Group

The Housing Shareholders Advisory Group was established in February 2010 to provide independent advice on the most effective delivery models for social housing and on productive and innovative ways to use social housing assets.[88] The advisory group comprised seven members, appointed by the Minister of Finance and the Minister of Housing, with a variety of experience in housing and property. They were Alan Jackson (chair), Campbell Roberts, Andrew Body, Martin Udale, Diane Robertson, Brian Donnelly, and Paul White. Of these, Paul White was the only Māori member.[89]

In April 2010, the advisory group released its report *Home and Housed: A Vision for Social Housing in New Zealand*. The report stated that 'New Zealand is already experiencing a housing shortage and the problem is set to worsen.'[90] It said the social housing model was not set to meet future challenges that would arise from market trends. Furthermore, there was an insufficient supply of housing, declining affordability, and a changing demographic that required different housing solutions for different populations.[91] The advisory group set out the four imperatives underpinning its vision of a future in which all New Zealanders had decent, affordable housing: to empower Housing New Zealand to focus on those with high needs, to develop third-party participation in housing provision, to instigate

87. Housing New Zealand, *Ira Mata, Ira Tangata: Auckland's Homelessness Count Report: Point in Time Count 2018* (Auckland: Housing First Auckland and Auckland Council, 2018), p 5; see also doc C2 (Alan Johnson), p [5] and transcript 4.1.6, p 366.

88. Housing Shareholders Advisory Group, *Home and Housed: A Vision for Social Housing in New Zealand* (Wellington: Housing Shareholders Advisory Group, 2010), p 4; see also doc B17(a) (Scott Figenshow appendices), p 9.

89. Document B17(d) (Scott Figenshow responses to questions in writing), pp [1], [5]–[7]; transcript 4.1.6, p 78.

90. Housing Shareholders Advisory Group, *Home and Housed: A Vision for Social Housing in New Zealand* (Wellington: Housing Shareholders Advisory Group, 2010), p 25; see also doc B17(a) (Scott Figenshow appendices), p 30.

91. Housing Shareholders Advisory Group, *Home and Housed: A Vision for Social Housing in New Zealand* (Wellington: Housing Shareholders Advisory Group, 2010), p 25; see also doc B17(a) (Scott Figenshow appendices), p 30.

initiatives across the broader housing sector, and to clarify sector accountabilities and delivery expectations.[92]

In essence, the advisory group's position reflected the new Government's outlook. The group reasoned that the State should play a reduced role in social housing provision, with a much increased participation by the private or non-governmental sector. It saw Housing New Zealand as having responsibilities that went beyond those of a 'normal landlord', such as managing the waiting list and 'time with difficult tenants'. The advisory group also questioned the 'State house for life' policy, suggesting that there needed to be more emphasis on 'moving tenants out of social housing'.[93] In this vein the advisory group criticised Housing New Zealand's role as both a funder and supplier of social housing. This, it contended, contributed to problems for third-party suppliers (many of which were iwi and small non-governmental organisations). It recommended that Housing New Zealand create housing solutions in partnership with private and non-government sectors, with the agency focusing exclusively on 'high needs' tenants 'who would be unable to manage in the private sector'.[94]

2.4.2 The demise of *Te Au Roa*

It was at this time (in 2010) that Housing New Zealand subsumed its Māori and Pacific strategies – *Te Au Roa* and *Orama Nui* – into its wider generic housing strategy.[95] *Te Au Roa* had originally been launched in 2007 to give direction to Housing New Zealand on how to engage with Māori and key stakeholders on housing issues, partner with iwi and Māori, and be effective and responsive to Māori.[96] The Crown explained that its termination was driven by Housing New Zealand's decision to focus on 'tenancy management and asset management'. Kāinga Ora could find no evidence of any engagement with Māori about this decision.[97] Its chief executive, Andrew McKenzie, acknowledged that this left the agency without a Māori-focused strategy until 2020.[98] The Housing New Zealand annual report for the year after *Te Au Roa*'s demise made no mention of Māori, which stood in contrast to the years when the strategy was in effect.[99]

92. Housing Shareholders Advisory Group, *Home and Housed: A Vision for Social Housing in New Zealand* (Wellington: Housing Shareholders Advisory Group, 2010), p 4; see also doc B17(a) (Scott Figenshow appendices), p 9.
93. Housing Shareholders Advisory Group, *Home and Housed: A Vision for Social Housing in New Zealand* (Wellington: Housing Shareholders Advisory Group, 2010), pp 5, 33–34; see also doc B17(a) (Scott Figenshow appendices), pp 10, 38–39.
94. Housing Shareholders Advisory Group, *Home and Housed: A Vision for Social Housing in New Zealand* (Wellington: Housing Shareholders Advisory Group, 2010), p 48; see also doc B17(a) (Scott Figenshow appendices), p 53.
95. Transcript 4.1.7, p 603; doc D10 (Crown bundle of evidential fact sheets for Kāinga Ora), pp [68]–[69].
96. Document D23(e), pp 2685–2728.
97. Document D10 (Crown bundle of evidential fact sheets for Kāinga Ora), pp [68]–[69].
98. Document D3 (Andrew McKenzie), p 50; see also transcript 4.1.7, p 605.
99. Transcript 4.1.7, pp 604–605; doc D3(h) (Andrew McKenzie), p 13.

2.4.3 The Social Housing Reform Programme

The *Home and Housed* report became the launchpad for the Government's Social Housing Reform Programme, developed in response to the advisory group's recommendations. Initially, Housing New Zealand was the agency responsible for administering the programme, but when the Ministry of Business, Innovation and Employment was formed in 2012, it took the lead.[100] The Social Housing Reform Programme aimed to give third-party providers a larger role in social housing, as recommended in *Home and Housed*.[101] Housing New Zealand tenancy managers would no longer have a social support role and were instead directed to refer their tenants to social support agencies.[102] The agency's more commercial role could be seen in the introduction of reviewable tenancies, which it explained in its 2012–2013 annual report meant that tenants whose 'circumstances improved significantly' would be moved on into 'alternative housing'.[103]

The Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Act 2013 made registered community housing providers (known as CHPs) and their tenants eligible for the income-related rent subsidy, which had previously been available only to Housing to New Zealand.[104] The Community Housing Regulatory Authority was set up to register and regulate the CHPs.[105] The Minister at the time, Dr Nick Smith, announced that, from November 2013, the Government would grow the community housing sector to the point where it provided 20 per cent of New Zealand's social housing, which the Government hoped to achieve by November 2018.[106] In 2014, the Government also transferred all tenant assessment and housing allocation functions from Housing New Zealand to the Ministry of Social Development.[107]

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100. In 2004, the Department of Building and Housing was established (bringing together relevant housing and building functions from the Ministry of Housing, the Ministry of Economic Development, the Department of Internal Affairs, and the Ministry of Social Development). This was until it was integrated into the Ministry of Business, Innovation and Employment in 2012. The Department of Building and Housing's relevant functions were carried over uninterrupted in the new expanded ministry.

101. Document D14 (Crown bundle of evidential fact sheets for the Treasury), p 2.

102. Document D10 (Crown bundle of evidential fact sheets for Kāinga Ora), p [119].

103. Document D23(e) (Crown common bundle of documents, vol 6), p 4031. We note that the merits of this approach were and remain highly contested.

104. Document D3 (Andrew McKenzie), p 21.

105. Document B17(a) (Scott Figenshow appendices), p 333.

106. Alice Mills, Katey Thom, Angela Maynard, Claire Meehan, Jacquie Kidd, David Newcombe, and Deborah Widdowson, *Meeting the Housing Needs of Vulnerable Populations in New Zealand* (Auckland: University of Auckland, 2015), p 42; see also submission 3.3.33(a) (claimant generic closing submissions on data collection appendices), p [1304]. We note that this was not achieved. In 2017, community housing providers had 12,700 from 83,300 social housing places (this was 15 per cent). Moreover, many of these places were not funded by income-related rent subsidies. Of the income-related rent subsidised places, only 4,800 from 63,300 were provided by the community housing sector (or 7.5 per cent): see Alan Johnson, Philippa Howden-Chapman, and Shamubeel Eaqub, *A Stocktake of New Zealand's Housing* (Wellington: Ministry of Business, Innovation and Employment, 2018), p 26; see also submission 3.3.33(a) (claimant generic closing submissions on data collection appendices), p [62].

107. Document D3 (Andrew McKenzie), p 21; doc D14 (evidential factsheet for the Treasury), p 1.

In 2015, the Government announced it would transfer some Housing New Zealand properties used as social housing – said to number between 1,000 and 2,000 homes – to community service providers.[108] In their 2018 stocktake report, Alan Johnson and his colleagues noted that the numbers of housing units owned by NGOs rose rapidly over the period from 2015 to 2017 'due to major transfer or sales'. Examples included the sales of 344 Hamilton units and 1,138 Tauranga units to Accessible Properties Ltd in March and October 2016 respectively.[109] In effect, the Government's social housing policy at the time involved the Crown divesting itself of some social housing responsibilities and, consequently, selling off some State houses. Evidence presented to us by Professor Howden-Chapman and her colleagues indicated the consequences of this change of direction:

> Housing units that are owned or managed by Housing New Zealand Corporation declined between 2011 and 2017. In 2011 the total number of housing units owned or managed by Housing NZ was 69,717, and in 2017 the total number was 62,917. In 2011 the total number owned by Housing NZ was 66,127, and in 2017 was 60,301 – this is the lowest total number since 2000. State owned housing has also declined as a percentage of the total national housing stock. In 2008, state owned housing comprised 4% of the total national housing stock; in 2017 it comprised 3.4%.[110]

2.4.4 *He Whare Āhuru He Oranga Tāngata – The Māori Housing Strategy*

Launched in July 2014, *He Whare Āhuru* was a strategic framework for responding to Māori housing needs, which the Government said would provide direction on Māori housing until 2025.[111] It was the first specific Māori housing strategy since the termination of *Te Au Roa* in 2010. At the time of its adoption, the framework was led by the housing team at the Ministry of Business, Innovation and Employment.[112]

2.4.4.1 *The development of* He Whare Āhuru

According to evidence presented by the Crown, the trigger for *He Whare Āhuru* was a performance audit carried out by the Auditor-General in 2011.[113] While *He Whare Āhuru* addressed Māori housing needs in the broadest sense, the audit that prompted it was much narrower in focus, being limited to whether Government planning and support for housing on whenua Māori was effective and efficient.[114]

108. Document D23(j) (Crown common bundle of documents, vol 11), p 14.
109. Alan Johnson, Philippa Howden-Chapman, and Shamubeel Eaqub, *A Stocktake of New Zealand's Housing* (Wellington: Ministry of Business, Innovation and Employment, 2018), p 28; see also submission 3.3.33(a) (claimant generic closing submissions on data collection appendices), p [64].
110. Document C14 (Philippa Howden-Chapman, Kate Amore, and Helen Viggers), p 10.
111. Document D12 (Crown bundle of evidential fact sheets for the Ministry of Housing and Urban Development), p 55.
112. Document D2(a) (Te Puni Kōkiri), p 4.
113. Document D12 (Crown bundle of evidential fact sheets for the Ministry of Housing and Urban Development), p [6].
114. Office of the Auditor-General, *Performance Audit Report: Government Planning and Support for Housing on Māori Land/Ngā Whakatakotoranga Kaupapa me te Tautoko a te Kāwanatanga ki te*

The Auditor-General's report, *Government Planning and Support for Housing on Māori Land*, recommended 'one organisation' to act as a point of contact for Māori who sought to build on whenua Māori; district plans that were flexible and allowed houses to be built on whenua Māori; local authorities and Māori landowners to work together to develop land; targeted financial assistance from the (then) Department of Building and Housing; and agency collaboration to help build the capacity of Māori organisations that planned to participate in housing development.[115]

Although the audit report was released in August 2011, it was not until November 2013 that the Ministry of Business, Innovation and Employment produced a project management plan for implementing the recommendations. This document was intended to highlight 'the expectations and milestones to complete a strategic plan for Māori housing'.[116] While the Auditor-General's report was focused on whenua Māori, the Ministry's subsequent project management plan was aimed at Māori housing more generally. It gave priority to ensuring vulnerable or high-risk individuals, such as discharged prisoners or people with drug and alcohol addictions, could access suitable housing that was based on Māori values.[117]

The project management plan stated that the development of the Māori housing strategy required the involvement of multiple internal and external stakeholders. It also called for the establishment of a Māori Housing Advisory Group (made up of five individuals) to provide feedback throughout the strategy development process.[118] In appendix F of the project management plan, it added that the consultation pool should include a mixture of iwi, land owners/trusts, whānau, and hapū.[119] Appendix A also mentioned consultation and stated that it had subsequently taken place with a range of Māori 'stakeholders' – although these stakeholders were different from those initially identified by the Ministry of Business, Innovation and Employment.[120] The Ministry of Housing and Urban Development

Hanga Whare i runga i te Whenua Māori (Wellington: Office of the Auditor-General, 2011), pp 9, 23.

115. Office of the Auditor-General, *Performance Audit Report: Government Planning and Support for Housing on Māori Land/Ngā Whakatakotoranga Kaupapa me te Tautoko a te Kāwanatanga ki te Hanga Whare i runga i te Whenua Māori* (Wellington: Office of the Auditor-General, 2011), p 16.

116. Document D23(d) (Crown common bundle of documents, vol 5), p 431.

117. Document D23(d) (Crown common bundle of documents, vol 5), p 434.

118. These individuals included Che Wilson, Victoria Kingi (Chair), Anne Huriwai, Yvonne Wilson, and Ricky Houghton: doc B98(e) (claimant bundle of Crown documents, vol 5), pp [443], [439].

119. The consultation pool included six iwi organisations: Ngāi Tahu, Ngāti Whātua o Kaipara, Ngāti Whātua o Ōrākei, Te Rarawa, Ngā Rauru, and Tūhoe; four land owners/trusts: Tauranga Māori Whānau Land Trusts, Mangatawa, He Korowai Trust, and Te Rūnanga o Kirikiriroa; two whānau: Unaiki Trust (Ahipara) and Ngāi Toa; one hapū: Raukawa; and several miscellaneous groups such as Tū Tangata o Maraenui, the Māori Trustee, and Te Matapihi he Tirohanga mō te Iwi Trust: doc D23(d) (Crown common bundle of documents, vol 5), pp 448–449.

120. Submission 3.2.318(a) (Maori Housing Consultation Summary – Copy), p 5; the names of the organisations consulted with included Te Mātāpihi, Housing Foundation NZ, Maraenui, the Ministry of Business, Innovation and Employment Māori Housing Advisory Group, Ngāti Whātua – Kaipara and Ōrākei, Aronui Technical Training Centre, BNZ, Independent Māori Statutory Board, Kiwibank,

told us that the development of *He Whare Āhuru* could be attributed to consultation with a number of people and organisations, whom it listed.[121] However, it is unclear whether the groups who helped develop *He Whare Āhuru* took part in the consultation process outlined in the appendix above, or in a different process altogether. As the Crown has lost institutional knowledge about this consultation with Māori, it is difficult to ascertain the level of consultation that actually took place and exactly who participated.

2.4.4.2 *The implementation of* He Whare Āhuru

The Ministry of Business, Innovation and Employment set out *He Whare Āhuru*'s measurable outcomes. These sat within the Government's 'Better Public Services' goals and included: increasing the number of homes that were insulated, safe, dry, and had essential amenities; increasing the number of individuals and whānau who could 'take advantage of home ownership opportunities'; increasing the number of Māori organisations working in the housing sector; and increasing housing, loans, and developments on Māori land.[122] It also included six directions. These were to:

- Ensure the most vulnerable Māori have secure tenure and access to safe, quality housing with integrated support services
- Improve the quality of housing for Māori communities
- Support Māori and their whānau to transition to preferred housing choices
- Increase the amount of social housing provided by Māori organisations
- Increase housing on Māori-owned land
- Increase large-scale housing developments involving Māori organisations[123]

He Whare Āhuru did not, however, focus on homelessness and in fact mentioned the word 'homeless' only twice.[124]

In 2014, the Office of the Auditor-General provided a progress update on the recommendations made in its 2011 report. Of *He Whare Āhuru*, which had just been released, the update noted:

Te Runanga a iwi o Ngapuhi, Unaiki Trust, Ngāi Tahu, Te Runanga o Kirikiriroa, Navigation Building Group, Power 2u and Others, Housing New Zealand Corporation, etito, Te Tumu Paeroa), cited in appendix a Māori Housing Consultation Summary, p 5; doc d23(d) (Crown common bundle of documents, vol 5), pp 439, 443.

121. Document d12 (Crown bundle of evidential fact sheets for the Ministry of Housing and Urban Development), pp [57]–[58].

122. Document d23(i) (Crown common bundle of documents, vol 10), p 734; see also Ministry of Business, Innovation and Employment, *He Whare Āhuru He Oranga Tāngata – The Māori Housing Strategy* (Wellington: Ministry of Business, Innovation and Employment, 2014), p 40.

123. Document a4 (*He Whare Āhuru he Oranga Tangata – The Māori Housing Strategy*), p 3.

124. Document a4 (*He Whare Āhuru he Oranga Tangata – The Māori Housing Strategy*), pp 7, 9.

The Ministry of Business, Innovation and Employment is preparing an evaluation model to measure progress and report against the Strategy. The evaluation model is expected to provide transparent information about the implementation of the Strategy. In our view, the results of evaluations need to be shared with all participants and the public in a way that is easily understood and easy to find. Also, information about how many houses have been, or are being, built on Māori land needs to be collected and available.[125]

2.5 The Government's Turning Point (2016–17)

2.5.1 Te Puea Memorial Marae and the Manaaki Tangata and Manaaki Tangata e Rua programmes

On several occasions between May 2015 and July 2016, Prime Minister John Key told the media that there was no housing crisis in New Zealand. In July 2016, when questioned in Parliament by Opposition leader, Andrew Little, the Prime Minister acknowledged that housing affordability was 'a challenge' but refused to use the word 'crisis'.[126] Meanwhile, in May 2016, the media reported people were sleeping in cars precisely because of such a crisis.[127] Around this time, Hurimoana Dennis, chairperson of the board of trustees of Te Puea Marae and a witness in this inquiry, took part in a television interview.[128] After Mr Dennis stated that Te Puea Marae would open its doors to the homeless, because 'that is what a marae does', about 80 people came to the marae for shelter over the course of two weeks. From May to September 2016, the marae operated its first homelessness programme, Manaaki Tangata. It gave homeless whānau temporary housing, food, clothing, and access to support services that could help with health care and long-term accommodation.[129] On 22 June 2016, Te Puni Kōkiri provided Te Puea Marae with a one-off grant of $11,500 for its work on homelessness.[130] The marae sought no further funding from the Government during this time.[131]

Te Puea Marae closed the Manaaki Tangata programme in September 2016. Mr Dennis described ongoing areas of risk that had existed to varying degrees

125. Office of the Auditor-General, *Government Planning and Support for Housing on Māori Land: Progress in Responding to the Auditor-General's Recommendations* (Wellington: Office of the Auditor-General, 2014), pp 3–4.

126. Document B14(a) (Hurimoana Dennis), pp 127, 132, 135; 'Housing Market – Auckland', 5 July 2016, *New Zealand Parliamentary Debates*, vol 715, pp 12397–123401.

127. Document B14 (Hurimoana Dennis), p 8; doc B14(a) (Hurimoana Dennis), p 130; doc B84 (Jennifer Nuku), p [6]; see also Newshub, 'The Hidden Homeless: Families Forced to Live in Cars', https://www.newshub.co.nz/home/new-zealand/2016/07/the-hidden-homeless-families-forced-to-live-in-cars.html, accessed 28 March 2023. This news broadcast seems to have been one of the media stories that particularly sparked nationwide attention on homelessness.

128. Document B14 (Hurimoana Dennis), p 8.

129. Document B14 (Hurimoana Dennis), pp 8–30.

130. Document B84 (Jennifer Nuku), p [8]; doc B14 (Hurimoana Dennis), p 11; doc B14(d) (Hurimoana Dennis), p 3.

131. Document B84 (Jennifer Nuku), p [8].

throughout the programme's lifetime, such as community perceptions, staff fatigue, security, and social media management. These, along with the difficulty in catering for specific groups (such as survivors of family violence), meant that the marae considered that the Manaaki Tangata model no longer met the needs of homeless people.[132] The marae then launched the Te Puea Memorial Marae Indigenous Homeless Service Delivery Model: Manaaki Tangata e Rua (which Mr Dennis referred to as MTER) in June 2017 in response to what it perceived as an escalating crisis.[133] Mr Dennis told us:

> The MTER program is well structured and focussed on end to end homeless service delivery for whanau who come to the Marae as homeless. The structure also allows MTER staff to focus on the collective/broader needs of the whanau, not just finding a home.[134]

Manaaki Tangata e Rua was an indigenous response to Māori housing and homelessness that used the 'co-location' approach.[135] This involved all services being in one location: Ministry of Social Development and Housing New Zealand staff were on site at Te Puea Marae and followed a 'Te Ao Maori approach'.[136] We heard from Mr Dennis that this 're-positioned Crown agencies in terms of how, when and where [they] could engage with [their] most vulnerable clients'.[137]

2.5.2 The Cross-Party Inquiry into Homelessness

On 14 July 2016, prompted by the attention being paid to homelessness, the Cross-Party Inquiry into Homelessness was launched by Marama Davidson, Phil Twyford, and Marama Fox of the Green, Labour, and Māori parties respectively. The inquiry held five public hearings, with the first at Te Puea Marae, and received 482 written submissions. Submitters were invited to present evidence on the agreed terms of reference for the inquiry, which were to:

1. Consider whether the official definition of homelessness needs updating, and recommend accordingly.
2. Assess the evidence on the current scale of homelessness, whether it is changing and how, and what the causes of that change might be.
3. Evaluate possible policy responses to homelessness, including international best practice, and recommend accordingly.
4. Consider how homelessness is experienced by different groups in society and evaluate policy responses that respond to that experience. For example, Māori experience of homelessness and Māori-led initiatives to respond.

132. Document B14(a) (Hurimoana Dennis), pp 110–111.
133. Document B14 (Hurimoana Dennis), p 20.
134. Document B14 (Hurimoana Dennis), p 28.
135. Document B14 (Hurimoana Dennis), pp 17–18.
136. Document D8(e) (Marama Edwards speaking notes), p [1].
137. Document B14(a) (Hurimoana Dennis), p 68.

5. Hear public submissions and expert evidence, particularly from those directly affected by homelessness and their advocates, and issue a written report.[138]

The cross-party inquiry's report *Ending Homelessness in New Zealand* (see section 2.3.3) was released in October that same year. It said that the 'housing crisis' was 'out of control'. Based on the evidence it had heard, the inquiry made 20 recommendations, including that the Government 'create a national strategy to end homelessness'. This would require a system-wide approach involving the 'homeless, local government, service providers, community housing providers, and Māori and iwi organisations'.[139]

2.5.3 The Emergency Housing Special Needs Grant and the use of motels for emergency housing

While the Cross-Party Inquiry into Homelessness was getting under way, the Government introduced the Emergency Housing Special Needs Grant. This was a benefit enabling individuals and families to stay in short-term emergency accommodation for up to seven days. Emergency housing is defined as a temporary support for people in urgent need of housing and the grants are disbursed by the Ministry of Social Development.[140] For those accessing these grants, accommodation was supplied by commercial and community providers.[141] During the early history of the special needs grant, from 2016 to 2017, Māori were immediately a majority of recipients.[142] It was at this point that the Government started relying on short-stay commercial accommodation (such as motels) for emergency housing.[143] (We discuss the number of clients accessing Emergency Housing Special Needs Grants from 2018 onwards in section 2.7.1.)

2.5.4 Progress with *He Whare Āhuru*

In 2017, Te Matapihi he Tirohanga mō te Iwi Trust ('Te Matapihi'), the self-described 'national peak sector body' for supporting and advocating for Māori housing, endorsed the six directions of *He Whare Āhuru* in a brief to the incoming Ministers of Housing and Urban Development and the Minister for Māori Development. However, it observed 'an apparent lack of progress with [*He Whare Āhuru*'s] implementation'. Te Matapihi attributed this failure to 'a lack of ownership

138. Document D23(a) (Crown common bundle of documents, vol 2), p 120.
139. Document D23(a) (Crown common bundle of documents, vol 2), pp 127–128.
140. Ministry of Housing and Urban Development, 'Transitional Housing', https://www.hud.govt.nz/community-and-public-housing/addressing-homelessness/transitional-housing, last modified 3 June 2021; doc D23(a) (Ministry of Housing and Urban Development Crown bundle), p 283.
141. Document D23(a) (Crown common bundle of documents, vol 2), p 283.
142. Document D32 (Crown bundle of evidential fact sheets for the Ministry of Social Development), p [1]. This data uses total count as people can self-identify and select multiple ethnicities as fits their preference.
143. Document B14 (Hurimoana Dennis), p 16; doc D23(a) (Crown common bundle of documents, vol 2), p 283.

of the strategy at an agency level, and the consequent lack of an implementation plan and monitoring and evaluation processes.'[144] To remedy these issues, Te Matapihi made three recommendations: the strategy needed leadership at a ministerial level; agency leadership needed to be clearly assigned; and an implementation plan needed to be developed, aligning with Government initiatives and sector-led strategies. Te Matapihi stated that the implementation plan also needed to contain a mechanism for monitoring and evaluation, and to act as the basis for future Government activities concerning Māori housing.[145]

2.6 Government Action on Housing and Homelessness (2017–21)

This section outlines steps the new Labour-led government took to combat housing problems, specifically homelessness, from 2017. It includes focus on two key initiatives: the Aotearoa/New Zealand Homelessness Action Plan (2020–2023) and Te Maihi o te Whare Māori – the Māori and Iwi Housing Innovation (MAIHI) Framework for Action (2020).

2.6.1 Commitment to public housing

On 19 October 2017, a Labour-led coalition government was formed after nine years of National-led government. At that time, according to researcher Alan Johnson and colleagues, home ownership rates had slipped to their lowest point in many decades. There was a significant housing shortfall, particularly in Auckland; rents were rising faster than incomes; and the reduced number of State houses had 'led to major shifts in tenure patterns for those on low incomes.'[146]

Among the new Government's priorities, therefore, was the increased provision of state housing. In April 2018, the Minister responsible for Housing New Zealand, Phil Twyford, provided Housing New Zealand's chair with the Government's annual letter of expectations. He referred to the Government's 'ambitious goals for the accelerated delivery of increased supply of state and affordable housing', and noted – among other things – that Housing New Zealand needed to 'increase housing supply in Auckland through the second phase of its Auckland Housing Programme'.[147] The 2018 budget committed Housing New Zealand to deliver a minimum of 1,100 net new state housing places each year until the 2021/2022 financial year.[148] In his evidence, the chief executive of Kāinga Ora, Andrew McKenzie, set out the large-scale housing projects that Housing New Zealand (and in due course

144. Document B54(e) (Te Matapihi he Tirohanga mō te Iwi Trust), p 9.
145. Document B54(e) (Te Matapihi he Tirohanga mō te Iwi Trust), p 9.
146. Alan Johnson, Philippa Howden-Chapman, and Shamubeel Eaqub, *A Stocktake of New Zealand's Housing* (Wellington: Ministry of Business, Innovation and Employment, 2018), pp 4–5; see also submission 3.3.33(a) (claimant generic closing submissions on data collection appendices), pp [40]–[41].
147. Document D23(e) (Crown common bundle of documents), p 1637.
148. Document D23(e) (Crown common bundle of documents), p 1634.

Kāinga Ora) then embarked upon, including the Tāmaki development, which is to add 3,500 new state homes in Auckland by 2046.[149]

This 2018 budget expenditure was reflected in the 2018 Public Housing Plan, which aimed to increase public housing by 6,400 places by June 2022. Kāinga Ora was to provide 70 per cent of these places, with the remaining 30 per cent coming from community housing providers.[150] The 2020 Public Housing Plan, which superseded the 2018 plan, provided for a further 6,000 public housing places by 2024 in addition to the original 6,400.[151] Again, Kāinga Ora were to provide 70 per cent of these places.[152] In February 2020, an additional 1,000 transitional housing places were funded as a commitment to the Homelessness Action Plan (see below),[153] and a further 2,000 transitional housing places were included in the 2020 Public Housing Plan. Through this 'accumulation through budgets and slightly out of budget cycles',[154] as Mr McKenzie put it, the Government was able to claim, in its 2020 plan, that it would deliver over 18,000 additional public and transitional housing places by 2024.[155] We return to the sums the Government was allocating in its budgets in section 2.6.6.

Aside from this focus on public housing, the new Government also established its KiwiBuild scheme. This aimed to increase home ownership rates by underwriting and otherwise supporting new housing developments, with developers – in exchange – offering a proportion of homes at more affordable, capped prices.[156] The Crown suggested that KiwiBuild also indirectly addressed homelessness by increasing the supply of affordable housing,[157] although we were not presented with any firm evidence of such an effect.

2.6.2 The establishment of new Government agencies

2.6.2.1 *The Ministry of Housing and Urban Development*

The Ministry of Housing and Urban Development was officially established in October 2018.[158] It brought together policy-making, funding, and regulatory functions previously spread between the Ministry of Business, Innovation and Employment; the Ministry of Social Development; and the Treasury. In doing so, the Government aimed to consolidate the provision of housing and urban

149. Document D3 (Andrew McKenzie), pp 31–32.
150. Document D23(g), p 545.
151. Document B13(b), p 32.
152. Transcript 4.1.7, p 537.
153. Document D1(d), p 17; doc D23(d) (Crown common bundle of documents, vol 5), pp 189–190.
154. Transcript 4.1.7, p 537.
155. Document B13(b), p 32; see also doc D1 (Andrew Crisp), p 51.
156. Document D23 (Crown common bundle of documents, vol 1), p 2215; doc D12 (Crown bundle of evidential fact sheets for the Ministry of Housing and Urban Development), p [85].
157. Document D12 (Crown bundle of evidential fact sheets for the Ministry of Housing and Urban Development), p [85].
158. Document D23(c) (Ministry of Housing and Urban Development Crown bundle), p 71.

development advice.[159] The Ministry's mandate was to address homelessness, make housing affordable, and make cities more liveable.[160]

As of 1 March 2021, the Ministry of Housing and Urban Development had four business units, each headed by one of four deputy chief executives: Te Kāhui Kāinga Ora – the Māori Housing Unit ('Te Kāhui Kāinga Ora'); the Housing Supply, Response and Partnerships group; the Place-based Policy and Programmes group; and the System and Organisational Performance group.[161] The Ministry said that the Place-based Policy and Programmes group would work 'with local government, iwi, developers and other stakeholders to identify housing and urban form issues in specific cities/regions, and to help develop and implement appropriate local responses.'[162]

2.6.2.2 *Kāinga Ora*

On 1 October 2019 the Government created Kāinga Ora, which amalgamated the KiwiBuild Unit (formerly part of the Ministry of Housing and Urban Development)[163] and Housing New Zealand (which was disestablished at the same time).[164] Kāinga Ora's principal role is to provide public housing. It partners with the Ministry of Housing and Urban Development and the Ministry of Social Development and, according to the Kāinga Ora–Homes and Communities Act 2019, its function is to provide leadership in the housing sector, and to help people access both short-term emergency accommodation and long-term accommodation. Under the Act, Kāinga Ora is also bound to engage with Māori.[165] In August 2020, its Māori unit, Te Kurutao, developed an interim Māori strategy called *Te Anga Whakamua*.[166] At the time the Crown gave evidence, Kāinga Ora's fully consulted Māori strategy was still under development.[167] It was launched in November 2021, just in time to be filed alongside the Crown's closing submissions. It is called *Kāinga Ora Māori Strategy/Te Rautaki Māori o Kāinga Ora 2021–2026*.[168]

2.6.3 The Homelessness Action Plan: Phase One (2020–23)

The Homelessness Action Plan was announced by the Government on 13 February 2020.[169] It was developed and is jointly owned by the Ministry of

159. Document D23(c) (Ministry of Housing and Urban Development Crown bundle), p 2599.
160. New Zealand Government, 'Ministry of Housing and Urban Development', https://www.govt.nz/organisations/ministry-of-housing-and-urban-development, accessed 12 January 2023.
161. Document D1 (Andrew Crisp), pp 15–18.
162. Document D1 (Andrew Crisp), p 16.
163. Document D12 (Crown bundle of evidential fact sheets for the Ministry of Housing and Urban Development), pp [78]–[80].
164. Document D3 (Andrew McKenzie), pp 32, 34.
165. Kāinga Ora – Homes and Communities Act 2019, ss 4; 10(2)(b); 11(1)(b)(iii); 13(1)(i); 14(1)(i), (k); 23(2)(e).
166. Document D23(e) (Megan Woods), pp 2675–2676; doc D22 (Te Ariki Pihama), p 8.
167. Document D22 (Te Ariki Pihama), pp 13–14.
168. Document D10(a) (Māori Strategy, Te Anga Whakamua, Te Au Roa (Kāinga Ora) evidential factsheet); doc D10(b) (Te Rautaki Māori o Kāinga Ora 2021–26 Māori Strategy Document).
169. Document B98(b) (claimant bundle), p 363.

Housing and Urban Development, the Ministry of Social Development, Kāinga Ora, the Ministry of Health, Te Puni Kōkiri, the Ministry for Pacific Peoples, the Department of Corrections, New Zealand Police, and Oranga Tamariki – Ministry for Children.

The action plan was developed after a series of workshops with what it describes as '[r]epresentatives from housing providers, non-governmental organisations, Iwi, local government and research institutions'.[170] It claims that engagement with these stakeholders reinforced the need for:

- a kaupapa Māori framework as part of this action plan
- ensuring interactions with people experiencing, or at risk of, homelessness are culturally appropriate
- a joined-up approach across government, and with Iwi and Māori organisations, non-governmental organisations, local authorities and providers
- better addressing the link between homelessness and mental health and addiction, family violence, and discharge planning from hospitals and prisons
- more funding for proactive and preventative initiatives, such as Sustaining Tenancies, and to identify and address the needs of people at risk of homelessness earlier
- more housing, with requests to look at a variety of options to bring on more affordable supply and more flexible regulations, with support for home ownership and shared housing options
- strengthened data, analysis and information-sharing to make it easier to support individuals, families and whānau in need.[171]

The ministerial foreword to the action plan describes it as a 'comprehensive central government-led and cross-agency plan' and the first of its kind.[172]

The overarching vision for the action plan is that homelessness in New Zealand 'is prevented where possible, or is rare, brief, and non-recurring'.[173] It has six guiding principles. The first is Te Tiriti o Waitangi: the plan asserts that '[t]he government's role, as Treaty partner, is to enable Māori to get where they want to be'. The other guiding principles are a 'whānau-centred and strengths-based approach' aimed at addressing 'individual needs within a whānau context, community and connection to place'; a 'focus on stable homes and wellbeing'; 'kaupapa Māori approaches' to delivering housing and homelessness services; 'supporting and enabling local approaches' to housing and homelessness; and 'a joined-up approach across agencies and communities'.[174] In its first phase (2020 to 2023), the action plan focuses on:

170. Document D23(k) (Appendices to Crown and Claimant Evidence: Crown bundle), p 974.
171. Document D23(k) (Appendices to Crown and Claimant Evidence: Crown bundle), p 974.
172. Document D23(k) (Appendices to Crown and Claimant Evidence: Crown bundle), p 955.
173. Document D23(k) (Appendices to Crown and Claimant Evidence: Crown bundle), p 972.
174. Document D23(k) (Appendices to Crown and Claimant Evidence: Crown bundle), p 972.

- providing additional support for individuals, families and whānau at risk of homelessness and currently experiencing homelessness
- reducing the use of motels as emergency accommodation by urgently putting in place new supply and continuing to build more public houses partnering with, supporting and empowering Māori, iwi and local communities in responding to local needs
- setting up an ongoing process to include the voices of individuals, families and whānau with lived experience of homelessness in the development, design and delivery of changes.[175]

The plan identifies the need to improve evidence and data on homelessness.[176] This led to the development of the Aotearoa Homelessness Action Plan Improve Evidence and Data on Homelessness Initiative ('Data and Evidence Initiative'). According to the Crown's evidential factsheet, it sought to 'build a comprehensive, fit for purpose, data and evidence system for homelessness' and 'deepen understanding of what responses work, for whom and under what circumstances' by monitoring, reviewing, and/or evaluating all action plan initiatives.[177] It was also intended that the Data and Evidence Initiative would utilise 'kaupapa Māori methodologies and researchers where appropriate'.[178] The Ministry of Housing and Urban Development also claims to be working further with the Homelessness Sector Services to advance the Data Partnership Project to 'deliver the necessary database, processes, and systems for achieving this action'.[179]

The action plan emphasises the need to measure and track progress, which it undertakes to publicly report on every six months.[180] A full progress update and internal review was scheduled to be released 18 months after the plan's initial release.[181] The two initial six-month progress reports were released in September 2020 and February 2021. The first claimed that, in the period under review, the Government had accelerated immediate actions to respond to Māori homelessness.[182] The second progress report claimed to have expanded on this list of immediate actions.[183] The reports indicated that longer-term actions were being devel-

175. Document D23(k) (Appendices to Crown and Claimant Evidence: Crown bundle), p 971.
176. Document D23(k) (Appendices to Crown and Claimant Evidence: Crown bundle), p 1010.
177. Document D23(k) (Appendices to Crown and Claimant Evidence: Crown bundle), p 1621.
178. Document D12 (Crown bundle of evidential fact sheets for the Ministry of Housing and Urban Development), p [32].
179. Document D7(d) (Appendix 1: Ministry of Housing and Urban Development), pp 21–22.
180. Document D23(d) (Crown common bundle of documents, vol 5), pp 189–190; see also Ministry of Housing and Urban Development, *First Progress Report on the Aotearoa/New Zealand Homelessness Action Plan* (Wellington: Ministry of Housing and Urban Development, 2020), pp 1–2.
181. Transcript 4.1.7, p 230.
182. Ministry of Housing and Urban Development, *First Progress Report on the Aotearoa/New Zealand Homelessness Action Plan* (Wellington: Ministry of Housing and Urban Development, 2020), pp 1–2; see also doc D23(d) (Crown common bundle of documents, vol 5), pp 189–190.
183. Ministry of Housing and Urban Development, *Aotearoa/New Zealand Homelessness Action Plan: Second Six-monthly Progress Report September 2020 – February 2021* (Wellington: Ministry of Housing and Urban Development, 2021), p 3; see also doc B13(b) (Vanessa Kururangi), p 40.

oped, but also said that the COVID-19 pandemic presented ongoing challenges and placed continued pressure on the housing market. The 18-month review was due in September 2021 but was released five months late, in March 2022.[184] As noted in chapter 1, the proactive filing of material after our hearings concluded – which included the delayed 18-month review – meant claimants could not respond to it and we undertook to treat it as contextual only. Because of the timing of its release we have decided not to refer to the contents of the 18-month review here.

2.6.4 Te Maihi o te Whare Māori – the Māori and Iwi Housing Innovation (MAIHI) Framework for Action

Development of the MAIHI framework began in July 2019 following discussions between then Associate Minister of Housing and Urban Development (Māori Housing) Nanaia Mahuta and Te Kāhui Kāinga Ora about how best to approach Māori housing.[185] According to the evidence of Kararaina Calcott-Cribb (deputy chief executive – tumuaki, Te Kahui Kāinga Ora), Minister Mahuta emphasised the need for an accelerated Crown response from the outset. Both Te Puni Kōkiri and Housing New Zealand (as it then was) were directed to bring together teams to identify gaps in the delivery of housing services to Māori.[186]

The development of MAIHI came after what Mrs Calcott-Cribb described as 'very direct engagement' with the national Iwi Chairs Forum at Waitangi in February that year, which had said it would build 1,000 homes under a scheme called 'Iwibuild' to correspond with the KiwiBuild programme.[187] While this was the starting point from which MAIHI eventually developed, the Crown also told us that *He Whare Āhuru* formed the foundations of MAIHI.[188] From February through to October 2019, Iwibuild became the Iwi Housing Innovation, then the Māori and Iwi Housing Innovation, and eventually 'MAIHI'.[189] Mrs Calcott-Cribb told us that these name changes reflected evolving discussions and advice about what a framework for Māori housing innovation should be, particularly the need for it to encompass both 'Māori' and 'iwi'.[190] The main work on the development of MAIHI took place in October 2019 with an invited group of iwi leaders and Māori housing experts. The final draft was agreed later that year.[191]

184. Memorandum 3.2.305, p 3; see also doc D38, p 5; New Zealand Government, *18 Month Review of the Aotearoa/New Zealand Homelessness Action Plan* (Wellington: Ministry of Housing and Urban Development, 2022), pp 1–2.

185. Document D6 (Kararaina Calcott-Cribb), p 5; transcript 4.1.7, p 35.

186. Document D6 (Kararaina Calcott-Cribb), p 5.

187. Transcript 4.1.7, p 35; doc D6 (Kararaina Calcott-Cribb), p 5.

188. Transcript 4.1.9, p 15.

189. Transcript 4.1.7, p 35. How exactly this evolved over the course of 2019 from an Iwi Chairs Forum initiative to a Crown one was not explained to us.

190. Document D6 (Kararaina Calcott-Cribb), p 5.

191. The following participants were listed: Kara George, Wayne Knox, and Rau Hoskin of Te Matapihi Trust, Karen Vercoe of Te Pūmautanga o Te Arawa, Karleen Turner of Tainui Group Holdings, Robyn Rauna, technician for the Iwi Leaders' Forum, Ali Hamlin and Rua Eagle of Kahungunu Social Services, and Pauline Tangohau of Te Komiti Nui of Ngāti Whakaue; doc D6 (Kararaina Calcott-Cribb), p 6.

MAIHI was approved by Cabinet on 18 May 2020, although the Ministry of Housing and Urban Development said its draft principles and outcomes had already been 'built into' the Homelessness Action Plan announced by the Government three months earlier.[192] According to advice that Minister Mahuta gave Cabinet, COVID-19 had lent urgency to the Government's wish to act on the housing and homelessness problems facing Māori; MAIHI would provide an appropriate spur, the Minister said, delivering 'at pace, a system-wide response to Māori housing stress that is critically required through the coronavirus pandemic . . . and the post-pandemic recovery periods.'[193]

MAIHI sets out a number of actions, some short-term and others future focused, which are grouped into three work streams: Respond, Review, and Reset.[194] The priorities within each stream are shown in table 2.

MAIHI claims to reflect a kaupapa Māori approach to Māori well-being through housing, with te mauri o te whānau (the life force of the whānau) sitting at the centre. Whakamana, tikanga, whanaungatanga, tino rangatiratanga, and manaakitanga all revolve around it.[195]

The Crown released *MAIHI Ka Ora – the National Māori Housing Strategy 2021 to 2051* in September 2021.[196] This strategy claims to take the MAIHI framework outlined above and deliver the strategic direction for the whole Māori housing system.[197] *MAIHI Ka Ora* is intended to reflect

> the structure of the Wharenui (principal house). The marae ātea and its surroundings is the place where the Crown and Maori work in partnership, share Māori housing priorities, and take collective action that moves us all forward towards our shared vision and aspirations for Māori housing over the next 30 years.[198]

MAIHI Ka Ora claims that it has six major components to address the challenges facing Māori housing. These are Māori-Crown partnerships, Māori-led local solutions, Māori housing supply, Māori housing support, the Māori housing system, and Māori housing sustainability.[199] In order to ensure the actions in the strategy are addressed, the Ministry says it will be reviewed every three years.[200]

192. Document B98(e) (claimant bundle of Crown documents, vol 5), pp [262], [409]; doc D6 (Kararaina Calcott-Cribb), p 6.
193. Document C12(a) (Te Matapihi He Tirohanga mō te Iwi Trust bundle), p 19.
194. Document D23(a) (Crown common bundle of documents, vol 2), p 1656.
195. Document B98(e) (claimant bundle of Crown documents, vol 5), pp [260]–[261].
196. Document D24 (Te Tūāpapa Kura Kāinga MAIHI Ka Ora), pp 11–46.
197. Document D38, p 10; see also New Zealand Government, *18 Month Review of the Aotearoa/New Zealand Homelessness Action Plan* (Wellington: Ministry of Housing and Urban Development, 2022), p 10.
198. Document D24 (Te Tūāpapa Kura Kāinga MAIHI Ka Ora), p 11.
199. Document D24 (Te Tūāpapa Kura Kāinga MAIHI Ka Ora), p 17.
200. Document D24 (Te Tūāpapa Kura Kāinga MAIHI Ka Ora), p 39.

Respond (short term, 6–12 months)	Review (short to medium term, 12–18 months)	Reset (medium to long term)
1. Decrease homelessness (roughsleeping, insecure housing, unsafe housing)	3. Resolve claims relating to housing policy and services	5. Consolidate fragmented Crown delivery and investment
2. Increase housing security (decreasing houselessness and increasing ownership and secure rental tenure)	4. Review current Crown policy and practice	6. Co-design and co-govern a cohesive, kaupapa Māori housing wellbeing approach

Table 2: The three work streams for MAIHI: respond, review and reset

2.6.5 The Government Policy Statement on Housing and Urban Development

Under the Kāinga Ora Act 2019, the Ministers of Housing and Urban Development and Finance are required to release a policy statement on housing and urban development setting out the Government's overall direction, priorities, and expectations in relation to Māori interests. The Government Policy Statement must also indicate how the Government expects to partner with Māori and protect Māori interests.[201] The Government's Policy Statement on Housing and Urban Development was released in September 2021, when hearings for this stage of the inquiry were nearing completion. The statement set out the direction for housing and urban development in Aotearoa New Zealand over the next 30 years.[202] It said that the Ministry of Housing and Urban Development's approach to working with Māori would be guided by the MAIHI framework which, it claimed, put Māori 'at the heart of the response, supporting a by Māori, with Māori, for Māori approach'.[203] The statement contained four aspirational outcomes that the Ministry sought to work toward, one of which was Māori housing through partnership. It also intended to 'operat[e] in genuine Te Tiriti o Waitangi partnership' to deliver successful local housing solutions for Māori, to provide Māori with easy access to support via a 'one door' approach, and to bring about improvements in areas across the housing continuum including intergenerational well-being outcomes and Māori home ownership rates.[204]

201. Kāinga Ora – Homes and Communities Act 2019, ss 5, 22, 23.

202. Ministry of Housing and Urban Development, *Government Policy Statement on Housing and Urban Development* (Wellington: Ministry of Housing and Urban Development, 2021), https://www.hud.govt.nz/our-work/government-policy-statement-on-housing-and-urban-development, p 3.

203. Ministry of Housing and Urban Development, *Government Policy Statement on Housing and Urban Development* (Wellington: Ministry of Housing and Urban Development, 2021), https://www.hud.govt.nz/our-work/government-policy-statement-on-housing-and-urban-development, p 16.

204. Ministry of Housing and Urban Development, *Government Policy Statement on Housing and Urban Development* (Wellington: Ministry of Housing and Urban Development, 2021), https://www.hud.govt.nz/our-work/government-policy-statement-on-housing-and-urban-development, p 23.

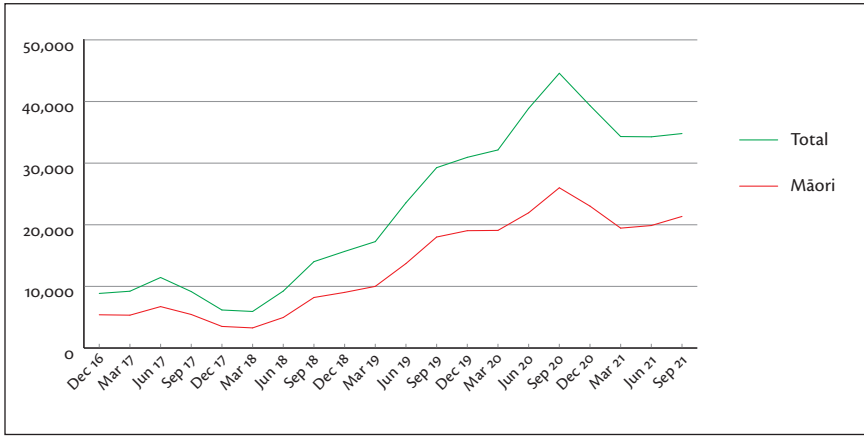


Figure 5: The number of emergency housing special needs grants given to Māori, and in total, at the end of each quarter, December 2016 to August 2021

2.6.6 Budgetary provision

The new Government's first budget was in 2018. It committed $234.4 million over four years to fund the additional 6,400 public housing places that we discussed at section 2.6.1.[205] The so-called 'Wellbeing Budget' of 2019 included further expenditure on a range of measures to address homelessness, including $197 million over four years to strengthen the Housing First programme, $153.7 million over four years to Oranga Tamariki to establish a new service to support young people exiting statutory care,[206] and $283 million 'to continue funding and maintaining' transitional housing.[207] The 2020 budget included $570 million for 8,000 new public and transitional housing places,[208] as well as $40 million for MAIHI and 'Māori housing supply' and $41.3 million for the Ministry of Pacific Peoples to assist with housing for Pacific families and communities.[209] The Budget also included $400 million in funding for the Progressive Home Ownership Fund, which was intended to help 'between 1,500 and 4,000 New Zealand families' to buy a home.[210]

Budget 2021 was announced during the second week of our hearings in May 2021, and the Crown detailed its allocation on matters relating to homelessness in closing submissions.[211] A sum of $380 million was allocated to Whai Kāinga Whai Oranga – a programme run by Te Puni Kōkiri to deliver 'new housing and

205. Document D23(a) (Crown common bundle of documents, vol 2), p [148].
206. Document D1 (Andrew Crisp), pp 51–52.
207. Document D1(d) (Andrew Crisp), p 17.
208. Andrew Crisp's evidence recorded this sum as $670 million: doc D1(d) (Andrew Crisp), p 17.
209. Document D23(d) (Crown common bundle of documents, vol 5), p 190.
210. Document D7 (Jeremy Steele), p 14.
211. Submission 3.3.65 (Crown closing submissions), pp 71–72.

repairs to existing homes' for Māori.[212] This, the Crown claimed, would deliver approximately 1,000 new houses (including transitional housing, affordable rentals, and a range of papakāinga housing), repairs for 700 Māori-owned homes, and $30 million to build future capability for iwi and Māori groups to advance housing projects and support services. The Crown set aside a further $350 million of the new $3.8 billion Housing Acceleration Fund[213] as the Māori Infrastructure Fund. Crown counsel said this money would provide housing by 'unlocking under-utilised whenua Māori'.[214] Altogether, Mr Crisp claimed that these sums represented 'the most significant investment into Māori housing in decades'.[215]

2.7 Covid, Emergency Housing, and Rural Pressures: The Homelessness Crisis Worsens

This section examines the state of homelessness while the Homelessness Action Plan and MAIHI were being developed and implemented, including in rural areas where little or no emergency housing was available.

2.7.1 The use of emergency and transitional housing

The Government's reliance on emergency and transitional housing as a solution to the housing crisis had been growing since 2016 (as noted in section 2.5.3).[216] Recipients of most emergency housing receive no wraparound support, unlike those provided with transitional housing.[217]

Quarterly snapshot data supplied by the Crown, and shown in figure 6, indicates that the total number of Emergency Housing Special Needs Grants in each quarter grew nearly sixfold between March 2018 and September 2021, from 5,931 grants to 34,800 grants (clients could apply for multiple grants in a quarter).[218] The overwhelming majority of these grants will have been for motel places.[219] For Māori, the total number of emergency housing grants grew more than sixfold

212. Document D38, p 7; see also Ministry of Housing and Urban Development, *18 Month Review of the Aotearoa/New Zealand Homelessness Action Plan* (Wellington: Ministry of Housing and Urban Development, March 2022), pp 7–8.

213. Ministry of Housing and Urban Development, 'Housing Acceleration Fund', https://www.hud.govt.nz/our-work/housing-acceleration-fund, last modified no date.

214. Submission 3.3.65 (Crown closing submissions), pp 71–72.

215. Document D1(c) (Andrew Crisp), p 8.

216. Ministry of Housing and Urban Development, 'Transitional Housing', https://www.hud.govt.nz/community-and-public-housing/addressing-homelessness/transitional-housing, last modified 3 June 2021.

217. Transcript 4.1.7, p 59. The Government provided wraparound support for people placed in emergency motels as part of the COVID-19 response, as noted in section 2.7.2.

218. Document D32 (Ministry of Social Development evidential factsheet), p [1]. These totals exclude grants to those who did not specify their ethnicity.

219. Between December 2016 and September 2018, the proportion of Emergency Housing Special Needs Grants that were used for motel places was 91 per cent: Ministry of Social Development, 'Details Regarding Motels Used for Emergency Housing, Letter from the Ministry of Social Development Under the Official Information Act 1982', January 2019 responses to OIA requests, Ministry of Social Development, https://www.msd.govt.nz/documents/about-msd-and-our-work/

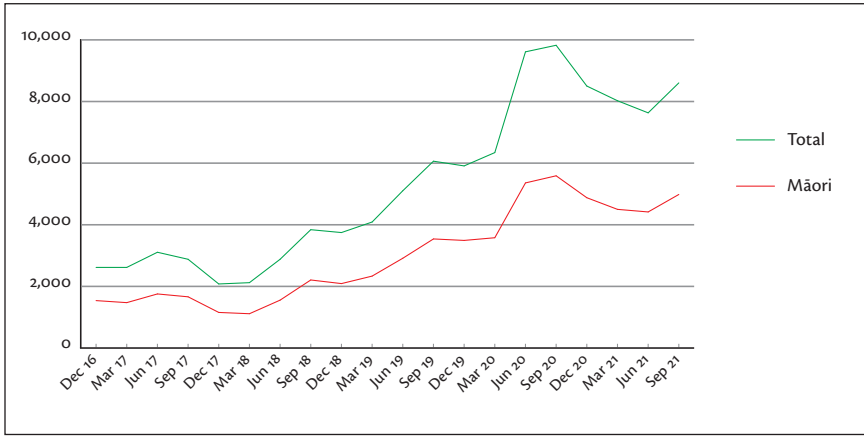


Figure 6: The number of distinct clients and distinct Māori clients given an emergency housing special needs grant at the end of each quarter, December 2016 to August 2021

between the same period from 3,264 grants to 21,351 grants. The proportion of grant recipients in the March 2018 quarter who were Māori was over 50 per cent. This rose by the March 2019 quarter and Māori continued to comprise just under two-thirds of all grant recipients until September 2021.[220] As shown in figure 6, the number of distinct clients who were Māori (counted once in a quarter) increased by more than four times between March 2018 and September 2021 from 1,113 to 4,983. The proportion of distinct clients who were Māori rose from 52 per cent in the quarter ending March 2018 to 58 per cent in September 2021.[221]

In the case of transitional housing, the Ministry of Housing and Urban Development contracts community housing providers to supply housing and a range of services to individuals and whānau with nowhere to live.[222] While transitional housing (like emergency housing) is considered a temporary solution, people can stay in transitional housing as long as required; the initial period of support is at least 12 weeks.[223] In 2016, Government funding for transitional housing providers sharply increased, and the 643 transitional housing places (as shown in quarterly data) then available grew to 1,663 places in September 2017. In May 2018, the Government announced a $37 million investment targeted at further increasing the supply of transitional housing places, public housing, and Housing First services.[224] A group of community agencies, funded by the

publications-resources/official-information-responses/2019/january/r-20190128-details-regarding-motels-used-for-emergency-housing.pdf, last modified, no date.

220. Document D32 (Ministry of Social Development evidential factsheet), p [1].

221. Document D32 (Ministry of Social Development evidential factsheet), p [1].

222. Transcript 4.1.7, p 59.

223. Document D12 (Crown bundle of evidential fact sheets for the Ministry of Housing and Urban Development), p [180].

224. Document D23(a) (Crown common bundle of documents, vol 2), pp 282–283.

Ministry of Housing and Urban Development, had recently formed Housing First in Auckland. An international model of housing, Housing First is based on the premise that housing is a basic human right and aims to move people straight into permanent housing without any preconditions or barriers to entry.[225] Over the winter of 2018, the Ministry of Social Development provided an additional 684 transitional housing places (the Ministry of Housing and Urban Development took over this function when it became operational in October 2018).[226] In February 2020, the Homelessness Action Plan committed to increasing the transitional housing supply by 1,000 places by the end of the year.[227] By mid-2020, the total number of transitional housing places was 3,234 – an increase of 445 places in the 2019–20 financial year,[228] many of these made in May 2020, as part of the response to COVID-19.[229]

2.7.2 The increased reliance on motels due to the COVID-19 pandemic

As we can see, the Crown had relied heavily on motels for emergency accommodation even before the COVID-19 pandemic arrived in New Zealand.[230] But their ongoing use was fundamental to the COVID-19 Homelessness Response Programme the Government introduced in March 2020. The programme relied on motels to house those the Ministry of Social Development considered 'chronically homeless' (usually those sleeping rough), funded by the Emergency Housing Special Needs Grant.[231] At that time, Minister of Housing Dr Megan Woods announced the Ministry of Housing and Urban Development's contracts with 59 transitional housing motels would be extended until the end of October 2021 and the ministry would also contract additional motels to meet increased demand.[232]

The Ministry of Housing and Urban Development claimed in its evidence that using motels meant around 1,500 people previously sleeping rough or in 'poor housing situations' had accommodation during the 2020 COVID-19 lockdown 'and onward'. This included 1,200 accommodation places in the peak of the 2020

225. Keri Lawson-Te Aho, Paikea Fariu-Ariki, Jenny Ombler, Clare Aspinall, Philippa Howden-Chapman and Nevil Pierse, 'A Principles Framework for Taking Action on Māori/Indigenous Homelessness in Aotearoa/New Zealand', *SSM – Population Health*, vol 8 (2019), p 3; see also doc C14(a), p 3.

226. Document D23(a) (Crown common bundle of documents, vol 2), p 219; doc D12 (Crown bundle of evidential fact sheets for the Ministry of Housing and Urban Development), p [179].

227. Document D23(d) (Crown common bundle of documents, vol 5), p 193; see also Ministry of Housing and Urban Development, 'First Progress Report on the Aotearoa/New Zealand Homelessness Action Plan', no date, p 5.

228. Document D23(d) (Crown common bundle of documents, vol 5), p 244.

229. Document D21 (Ministry of Housing and Urban Development Cabinet paper), p 2.

230. Ministry of Social Development, 'Table One: Number and Amount of EHSNGs Granted between 1 October 2016 and 30 September 2018' (in letter from the Ministry of Social Development released under the Official Information Act 1982), https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/official-information-responses/2019/january/r-20190128-details-regarding-motels-used-for-emergency-housing.pdf, accessed 9 June 2022, p 5.

231. Document D21(a) (Ministry of Housing and Urban Development COVID-19 Homelessness Response Plan), p 1.

232. Document D23(a) (Crown common bundle of documents, vol 2), p 1148.

lockdown and an ongoing 877 places at 31 October 2021, shortly before our hearings closed. All these clients received wraparound services.[233] We note that, as is clear from the previous section, these COVID-19 places have been only a minority proportion of the emergency motel places used to accommodate the homeless.

2.7.3 Homelessness and inadequate housing in rural areas

Homelessness in rural communities has been acknowledged as another key aspect of the housing crisis in recent years. Data from the 2018 census showed that the Far North District, for example, had practically the highest prevalence rate of severe housing deprivation (and one of the highest populations of homeless people) in the country.[234] People in rural areas were more likely to live in a dwelling that lacked amenities, such as a toilet, kitchen sink, or bath or shower, than people in urban areas. Furthermore, Māori in rural areas were considerably more likely than the total rural population to live in a dwelling that lacked one or more basic amenities.[235]

The contributory causes of regional homelessness 'hot spots' differ from place to place, but Crown officials identified, in a 2019 briefing paper, two common overarching drivers of rural housing poverty. The first was the increase in 'stressed renters' leaving towns and cities for regional areas with cheaper housing. The second involved a reduction in the amount of rental housing stock, which had been exacerbated by the demand for short-term holiday rentals in certain areas. In Northland, for example, rental house prices increased by over 70 per cent from 2014 to 2019.[236]

As noted above, Budget 2020 delivered funding for 8,000 new public and transitional housing places across New Zealand. The Government claimed its Public Housing Plan, which set out its public housing supply intentions, was its 'key response to increasing demand for public housing across New Zealand over the next four years'.[237] The plan said Northland would see an increase in 311 public housing places; supply would be targeted towards Whangārei with 'some' places intended for the far north.[238]

We return to the topics of rural homelessness, inadequate housing, and barriers to the use of whenua Māori – along with the possible causes and alleged consequences of these entwined problems – in section 4.4.1 of chapter 4.

233. Document D21(a) (Ministry of Housing and Urban Development COVID-19 Homelessness Response Plan), pp 1–3, 5–6.
234. Kate Amore, Helen Viggers, and Philippa Howden-Chapman, *Severe Housing Deprivation in Aotearoa New Zealand, 2018* (Wellington: He Kainga Oranga/Housing and Health Research Programme, University of Otago, 2020), p 19; see also doc C14(a) (Philippa Howden-Chapman, Kate Amore, and Helen Viggers), p 283.
235. Document C14 (Philippa Howden-Chapman, Kate Amore, and Helen Viggers), p 5.
236. Document D23(a) (Crown common bundle of documents, vol 2), pp 400–403.
237. Document D23(d) (Crown common bundle of documents, vol 5), p 41.
238. Document D23(d) (Crown common bundle of documents, vol 5), pp 40, 42.

2.8 Conclusion

All homelessness statistics show that Māori are the worst affected. They also show that this inequity has worsened during the period covered by our inquiry. At the time Statistics New Zealand published a homelessness definition in 2009, there was comparatively little policy or public attention on the problem. It seems clear, though, that even then problems were brewing that would lead to the crisis widely identified in 2016. To some extent, the scale of the problem may have been hidden earlier in the period by Government policies that restricted access to the housing register. As it transpired, it was more the news media and the actions of Māori – as evidenced by Te Puea Memorial Marae – that brought the crisis to national attention.

Since then, the Crown has put in place a series of measures to deal with homelessness, including the country's first national homelessness plan. It has renewed its policy focus on Māori housing needs, following its failure to implement the 2014 Māori housing strategy (which we explore in section 4.3.2 below). We will consider the parties' arguments on all these developments in chapter 4. We now turn to claimant experiences of homelessness across New Zealand.

2.9 Ētahi Tauira o te Kāinga Kore / Experiences of Homelessness

Much of this inquiry has been devoted to understanding policies and practices developed over a 12-year period; statistics and reports; and the effectiveness of strategies, systems, and institutions. But it has been driven by the lived experience of the claimants and their witnesses who appeared before us in hearings or provided written testimony. Their evidence has provided insight into what it means to be homeless, to support others facing homelessness, or to set up community services to tackle local housing problems – often on a shoestring budget and with negligible Government support.

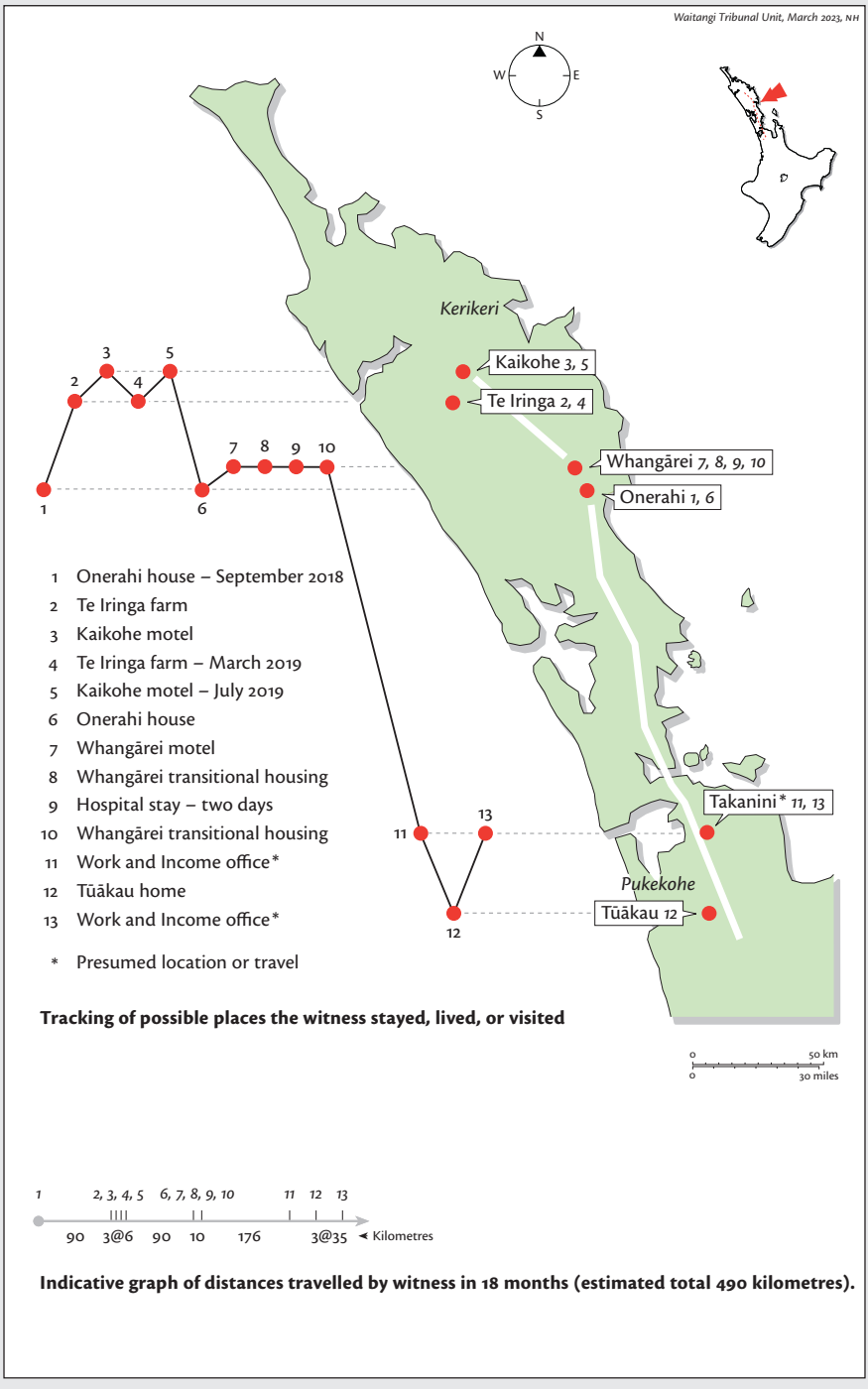
This part of the chapter draws together some of this claimant evidence to reveal the different faces of homelessness around the motu – in small towns and large cities, in isolated rural locations, and across entire regions. It reflects the experiences of individuals, whānau, hapū, marae-based services, and other community providers. These accounts are largely in the claimants' own words.

2.9.1 He tauira o te kāinga kore a tētahi tangata / An individual's experience

Witness Shania Hei gave evidence at the first hearing of this inquiry, held at Te Puea Marae in March 2021. She spoke about her 15-month experience of homelessness and the impact on her whānau.[239]

In September 2018, Shania was 19 and the primary caregiver for her newborn son and two teenage siblings. They and Shania's partner all lived in her father's three-bedroom house in Onerahi, Whangārei. It was overcrowded, with four adults and eight children. Over the next five months, Shania viewed over 15 houses but could not secure a place of her own to rent.

239. All quotes and information presented here are from doc B76 (Shania Hei).



Tracking of possible places the witness stayed, lived, or visited

Indicative graph of distances travelled by witness in 18 months (estimated total 490 kilometres).

Key locations in Shania Hei's journey to find a home

In March 2019, Shania and her immediate family moved to her partner's father's farm in Te Iringa, just south of Kaikohe. For five months, they stayed in a 'small unit with no running water or electricity'. Shania said she was 'grateful' to have somewhere to live but the situation was unsuitable. While living on the farm, Shania applied for emergency housing. However, she could not go on the housing register immediately because Work and Income required at least three months' documented evidence of house hunting, including declined applications. Although Shania had been searching for longer than this, she lacked the evidence. She therefore kept searching, applying for houses in Whangārei, Kaikohe, Kerikeri, and elsewhere. These applications were all declined. During this period, her son and her siblings often needed to see a doctor after getting sick from the poor living conditions on the farm. Shania asked Work and Income for regular updates, telling them her family was 'desperate' and 'really needed a house as soon as possible'.

In late July 2019, Work and Income offered Shania and her children a one-bedroom motel unit in Kaikohe. They could stay a week, during which time Shania had to continue proving she was looking for permanent housing. By the end of the week, she had no other accommodation and managed to persuade Work and Income to pay for another week. This 'week-to-week' living continued for four weeks: 'Every Sunday felt like a panic because I didn't know what was going to happen – whether we would be able to stay, have to move or have nowhere to go again.'

Shania regularly called Work and Income, asking about her position on the housing register. She was told that to move up the waiting list, she had to bring printed evidence of house-hunting into the office. Shania found this 'stressful' because she did not have a car or money for printing. Work and Income told her that she 'would need to figure it out because they needed the proof'.

At the start of the fifth week at the Kaikohe motel, Shania and her family 'had to check out again with nowhere to go'. They went back to the Te Iringa farm and, two days later, Work and Income told them another motel room was available in Kaikohe. When Shania and her family arrived, they were informed that Work and Income had only paid for three days' accommodation. Eventually, Work and Income paid for the remaining two days after Shania requested an extension. After five days, the motel owner offered Work and Income a smaller room, which Shania and her family moved into.

After another fortnight of 'week-to-week' living in the smaller room, Shania said that 'The owner started coming to the room and asking if I wanted to go to dinner with him etc and I started to feel very unsafe because it was just myself and the kids living there at that stage.' She told Work and Income she wanted to move, and they settled the motel bill. But when Shania asked if other accommodation was available, Work and Income told her 'they could no longer help . . . because it was my decision to move out of the motel'.

Shania's partner's father picked them up from the motel and drove them back to her own father's house in Onerahi, which was still overcrowded. The next day Shania took her son, her siblings, and all their belongings to a local Work and Income office 'so that they would be forced to find us a place to stay'. Work and

Income found them emergency accommodation that day 'in a motel in Whangarei, which was a "long term" option, meaning we could stay for two weeks'.

The Whangārei motel was filled with other families in need and they 'became like a community'. The owners noticed how clean Shania kept her room and offered her a job cleaning other rooms in the motel. Shania was grateful, but could only work when someone was available to look after her son. Meanwhile, Work and Income reminded Shania that her siblings should be in school. But without permanent housing, 'there was no way to [know] if they would be around long enough in one place to enrol at a school let alone attend and do their best'.

While at the motel, Shania reached out to the Ngāti Hine Health Trust. Acting as her advocate, they helped her get a higher place on the housing register and to secure transitional housing in a motel, where the family could stay for six weeks at a time. However, Shania still needed to prove she was looking for permanent housing. Much like the others, this motel was 'in really bad shape', with 'moisture issues or mould' and 'really filthy' floors. Shania worried about the health of her son and her siblings. At the transitional housing motel, her son got bronchiolitis (requiring hospitalisation) and one of her siblings got strep throat. Shania, her son, and one sibling stayed at the hospital for two days, while Shania's partner looked after her other sibling at the motel.

Two days after leaving hospital, Work and Income offered Shania and her whānau a two-storey house in Pukekohe. However, Shania declined because, as stated on her housing register application, she needed a single-storey house 'because of the new born'. Work and Income told Shania that if she declined the house, she would be removed from the housing register. Shania persisted and, two days later, a different staff member offered Shania a single-storey, fully fenced house in Tūākau, Waikato.

Shania was told she had to view the house and then return to Work and Income's Takanini office[240] to confirm her acceptance by the following afternoon 'Even though I had no car or no way of getting down there . . . I had to organise a loan as soon as I could to make my way down to Tuakau and then to Takanini but I knew I had to do it to get into a permanent home.' On the day, the family was running late getting there in time so they went to the Takanini Work and Income office first. However, Shania was told she had to go and view the house before she could accept it. They rushed down to Tūākau and back to Takanini. 'When we got [back] to the office it was 4:30pm and many staff members were leaving, the staff member handling my case said "I was just about to head out, but okay let's do the paperwork." It felt like she didn't understand the stress and pressure myself and my family were under, or how far we had driven to try and get the house.'

Shania secured the house in December 2019 and still lived there at the time she presented her evidence in March 2021.

240. Ms Hei's evidence refers to the 'Takanini' office, and this is how it appears on the accompanying map. The office's address is officially 'Papakura North'.

South Pacific Pocket Guide

Ōpōtiki township

2.9.2 He tauira o te kāinga kore i Ōpōtiki / Homelessness in a rural town: Ōpōtiki

In Ōpōtiki, a small rural town in the eastern Bay of Plenty, 'homelessness is a huge issue' which can take many forms, we heard.[241] Claimant Tracy Hillier of Ngāi Tamahaua said that, in preparing for this inquiry, she 'heard from around 30 whānau in the rohe who [were] currently experiencing homelessness'.[242] Some were in temporary accommodation, while others occupied overcrowded, dilapidated, and uninhabitable housing without electricity or running water. Some lived on the streets or in cars. She knew of one whānau with eight children who were living 'under the Waioeka river bridge'.[243]

Ms Hillier – who has helped whānau with housing problems over many years – said the rising cost of housing was a significant contributor. House prices in Ōpōtiki had increased by 96 per cent between March 2016 and December 2020, she said, with the median house price climbing from $166,950 to $327,150.[244] These soaring property values affected whānau in many ways. Few could save for a house deposit due to low incomes and high living expenses, so they became 'stuck in a cycle of renting'. But rents were increasing, 'leaving many . . . pensioners and those on fixed incomes struggling'. Ms Hillier told us of tenants who had been

241. Document B95 (Tracy Hillier), p 2.
242. Document B95 (Tracy Hillier), p 13.
243. Document B95 (Tracy Hillier), pp 6, 13.
244. Document B95 (Tracy Hillier), p 10.

evicted and 'forced to either leave the rohe altogether or perhaps live with whānau in an overcrowded house'.[245] Higher property values had also fuelled rate rises, meaning even some whānau 'fortunate enough to own their own home . . . have sold their homes and do not have enough money to re-establish themselves'.[246] Compounding these problems was the scarcity of affordable rental properties. According to Ngāi Tamatea ki Waiotahe hapū claimant Kate Hudson, those rentals available therefore become 'hugely overcrowded with whānau reaching out to help and house other members of their whānau'. The resulting stress was 'immense'.[247]

There was also a 'desperate need' for more emergency housing in the area, we heard.[248] Ōpōtiki's two emergency housing centres were 'always at maximum capacity [and therefore] a lot of whānau are usually turned away and end up homeless again,' said claimant Annette Hale.[249] Yet, the Crown owned residential properties in the town that could be used as emergency housing, she said. The Crown had also declined to turn the town's former hospital (comprising 65 rooms and six nurses' homes) into emergency housing. Instead, the hospital was used to house refugees who paid up to $300 per week. Ms Hale – who has been helping homeless people find accommodation in Gisborne and Ōpōtiki for around 30 years – said this 'was unfair to the refugees, and unfair that the hospital was given over to that purpose, especially given that the refugees only stayed 3 months'.[250]

Several claimants highlighted the connection between Ōpōtiki's seasonal work patterns and homelessness. According to Ms Hillier, the summer kiwifruit picking season brought an influx of workers from other regions and overseas, and many ended up living with friends or whānau in overcrowded conditions. Once the season was over, the workers lost their incomes and their temporary homes as well. Ms Hillier acknowledged resources and support (including 'seasonal housing in camping grounds') had been provided to help these workers. But she said housing was being viewed 'from a perspective of housing workers not providing a safe healthy home for families'.[251] Another claimant, Bella Savage, spoke of supervising a group of thirty foreign kiwifruit workers who came to Ōpōtiki in 2016. She was able to find them suitable accommodation – an experience that made her realise that young Māori facing homelessness were 'missing out' on similar opportunities. She subsequently arranged for some of the accommodation secured for seasonal workers to be made available for emergency housing when no workers were living there. This arrangement lasted until 2019.[252]

Another key concern for Ms Savage was the lack of accommodation for people with mental health issues in Ōpōtiki. The only suitable accommodation was 50

245. Document B95 (Tracy Hillier), p 10.
246. Document B95 (Tracy Hillier), pp 9–11.
247. Document B11 (Kate Hudson), p 1.
248. Document B24 (Amanda Walker), p 2; doc B77 (Bella Savage), p 3.
249. Document B30 (Annette Hale), p 5.
250. Document B30 (Annette Hale), pp 2, 7.
251. Document B95 (Tracy Hillier), p 7.
252. Document B77 (Bella Savage), p 4.

minutes' drive away in Whakatāne. Offering only 10 beds, it was frequently full.[253] Ms Savage said that the next closest option was in Tauranga but 'significant financial barriers' prevented Ōpōtiki locals from travelling that far.[254] While Te Puni Kōkiri had provided some additional funding in 2016 to accommodate mental health patients in Ōpōtiki, it was 'still not enough' to address their needs.[255] The town's lack of mental health accommodation meant that local people experiencing homelessness and mental health problems were without the 'support mechanism' that the Government's Homelessness Action Plan identified as 'an important protective factor against homelessness'.[256]

Claimants highlighted the local impact of various central government policies. As noted earlier, Ms Hale was aware of 42 properties in Ōpōtiki that she said the Crown owned and had landbanked, some of them vacant. She considered that 'these properties could be used to provide housing to homeless Maori in Ōpōtiki until they are returned . . . through the treaty claims process'.[257] She also identified problems with Housing New Zealand's 'rent to buy' scheme, including significant rent rises; although many whānau lived in Housing New Zealand homes, she said 'not a whole lot are buying the homes, only a few can do that'.[258]

Local government also had an impact on homelessness and community-led attempts to address it, said claimants. Ms Hillier raised Ngāi Tamahaua concerns about the Ōpōtiki District Council's re-establishment of the Ōpōtiki Harbour, a major development allowing for larger boats and economic growth. While the development was 'not inherently a bad thing', Ngāi Tamahaua opposed it because of the resulting increase in property values; 'landlords want to sell their homes and take advantage of the increase in value of their asset and our Whanau are displaced', they said.[259] Another challenge involved the Muriwai Hall, a historic building the hapū owned and intended turning into a community hub, with beds and shelter for people in need. They fundraised $30,000 to upgrade the hall but then learned a 'cumbersome and hugely expensive' resource consent process would be required. Before they could even apply for consent, the hall burned down in 'an alleged arson'. Because they had not been able to afford insurance, the money invested and the cost of clearing the site could not be recouped.[260]

Ms Hudson also described a community-led response to homelessness in Ōpōtiki. Thirty years ago, her whānau began a papakāinga development in Waiotahi Parish. They had faced 'regulatory and local government barriers'. While most of the papakāinga houses were 'healthy, warm, insulated and safe', she said, two needed urgent repair. But the ahu whenua trust she chaired lacked sufficient

253. Document B77 (Bella Savage), pp 5–8.
254. Document B77 (Bella Savage), p 8.
255. Document B77 (Bella Savage), p 8.
256. Document B77 (Bella Savage), p 7.
257. Document B30 (Annette Hale), p 4.
258. Document B30 (Annette Hale), p 5.
259. Document B95 (Tracy Hillier), p 9.
260. Document B95 (Tracy Hillier), pp 13–14.


Sun Media

The fire at Muriwai Hall in October 2018

funds to fix them,[261] and there was nowhere to accommodate whānau members who would need relocation in the interim. '[W]e have an overriding moral obligation not to throw our own uri out onto the street to be homeless [but] support from the Government for our situation is little to none', she told us.[262] Plans to expand the papakāinga – at the time of our hearings, foundations existed for two more houses, while three whānau had signalled their intention to return and build there – depended on developing more infrastructure. Ms Hudson described the process for getting Te Puni Kōkiri support as 'cumbersome'. In the meantime, 'whānau [were] living in a tent waiting for their home to be built'.[263]

2.9.3 He tauira o te kāinga kore i Te Tai Tokerau / A regional experience: Te Tai Tokerau

Homelessness in rural Te Tai Tokerau manifests itself differently than in urban areas, claimants said. 'We do not have homelessness here that looks like Auckland where people are living on the streets with boxes and sleeping bags (if they are lucky), but we do have homelessness', said Pamela-Anne Ngohe-Simon, who worked voluntarily in her Moerewa community.[264]

261. Ahu whenua trusts are designed to administer Māori land blocks on behalf of their owners.
262. Document B11 (Kate Hudson), p 2.
263. Document B11 (Kate Hudson), p 3.
264. Document B5(a) (Pamela-Anne Ngohe-Simon), pp 1, 3.

A growing number of people had returned to the region from urban centres in recent years, said Delaraine Armstrong, chair of the Te Orewai Te Horo Trust. She had seen 'more and more whanau wanting to move home . . . and live on our whenua' at Te Horo, north-west of Whangārei. But there was little prospect of them being able to build 'proper homes' or take up 'meaningful employment', which was scarce in the area. She said they came 'because they do not have a job or a house in whatever town they live in. It is a "last resort" option for them.' Substandard rentals or temporary huts and cabins on relatives' land were often the only accommodation they could afford:

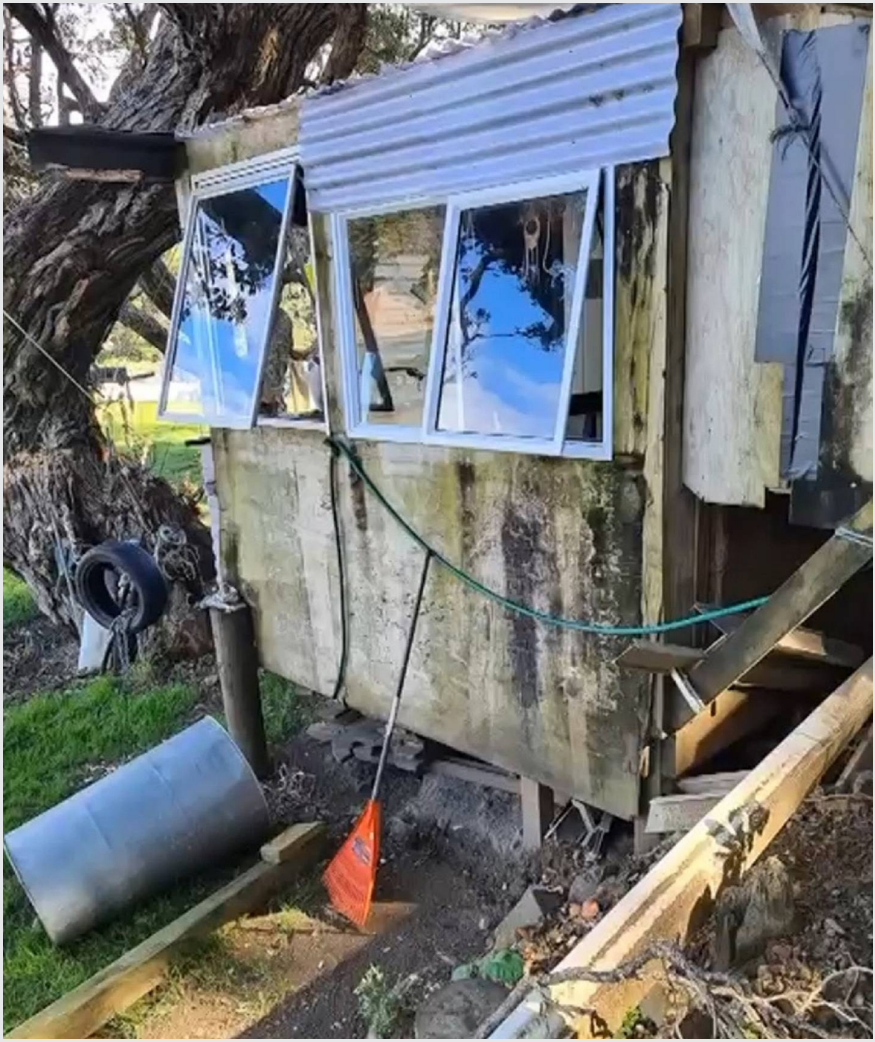
> These buildings are at the lowest level of what a human being could tolerate. I went for a walk on the whenua last year and there are whanau who are living behind the hills in nooks and crannies where people cannot find them. We do not know who is living where and in what conditions, but there are buses and sheds and a proliferation of substandard housing that families are turning to.[265]

She and other claimants described whānau occupying 'makeshift whare' that were cold and damp.[266] Ms Armstrong had seen 'families living in small cabins with no plumbed water, no hot water and no running/drinking water. They would swim in the creek to bathe [and] dig holes as toilets', even in winter.[267] Claimants told us of people across the region living in cars, tents, and under corrugated sheets of iron, sometimes using facilities meant for freedom campers.[268]

Recent returnees in makeshift dwellings were not the only ones living with inadequate plumbing, sewerage, water, and electricity. Poor housing conditions were evident across the region. In Moerewa, Ms Ngohe-Simon had seen 'septic tanks that at times were bubbling, overflowing and in grave need of maintenance. Our children get so sick from this. Our old people get so sick from this.' Yet, because whānau lacked the money for maintenance or repairs, many whare were in 'a terrible state'.[269]

Claimants described how Te Tai Tokerau's housing problems were driven by the same trends seen elsewhere: rising house prices, soaring rents, and a shortage of affordable rental properties. The region had also seen 'a huge increase in property speculation' by outside investors, said witness Kelly Stratford who, at the time of hearing, was a Far North District councillor and member of the Waikare Marae Committee.[270] She and others told us of Māori having to compete 'against people from the cities with better credit and rental histories',[271] and even being dismissed

265. Document B7 (Delaraine Armstrong), pp 2–3.
266. Document B20 (Rowena Tana), p 2; B4 (Kelly Stratford), p 6.
267. Document B7 (Delaraine Armstrong), p 4.
268. Document B7 (Delaraine Armstrong), p 4; doc B34 (Donna Flower and Joanne Hammon), p 7; doc B4 (Kelly Stratford), p 3.
269. Document B5(a) (Pamela-Anne Ngohe-Simon), p 4.
270. Document B4 (Kelly Stratford), p 3.
271. Document B20 (Rowena Tana), p 2.



Rhonda Zielinski-Toki and Doug Healey

The home of a kuia in Kāeo, Te Tai Tokerau

by rental agencies with 'racist ideas about what they will be like as tenants'.[272] Countering the return of people to the region due to factors including high housing and living costs elsewhere, we also heard that other 'whānau who have lived in [their] rohe their whole lives as well as second and third generation whānau [were] having to move away in search of affordable rentals'.[273]

272. Document B4 (Kelly Stratford), p 2.
273. Document B34 (Donna Flower and Joanne Hammon), p 6; see also doc B14(g) (Hurimoana Dennis), p 5; doc B15 (Veronica Henare), pp 10–11.

The limited availability of social and emergency housing across the region was a common claimant concern. In the Bream Bay area south-east of Whangārei, for example, Patuharakeke claimant and social worker Donna Flower said she was 'approached almost weekly by whānau who have lived [there for] their whole life . . . asking for support to access housing in the area as the homes they are living in are being sold and the tenancy is not being renewed.'[274] But the few Kāinga Ora homes were often tenanted by whānau from elsewhere 'due to the agency's eligibility policy'. Local whānau who were eligible for Kāinga Ora homes had no guarantee of staying within the rohe; they might be housed in a different district instead.[275] In response, the Patuharakeke Te Iwi Trust Board had sought to 'tautoko whānau that are struggling to put a roof over their heads' by using 'resources left to us on some of the last remaining pieces of whenua we own in our rohe'. They provided three kaumatua flats 'for those of our elders that seek to return home', and two former school buildings were available to accommodate whānau needing immediate assistance and 'eventually get them into a more permanent whare'.[276]

Ms Stratford and others acknowledged Government initiatives to assist homeless people in the region. Speaking in 2021 after Kāinga Ora announced that around 300 new houses would be built in Te Tai Tokerau, Ms Stratford said it came '10 years too late'. Homelessness in the region had become so bad that it had

> already had a profound impact on education, physical health and mental health for our whanau. We need not only policy to address the current shortage of homes, but policy to redress and address the prejudice suffered by families so those impacts are not felt for generations to come.[277]

Other claimants described Crown initiatives that had achieved little. Kara George, the Ngāpuhi Housing Coordinator for Te Rūnanga-Ā-Iwi-O-Ngāpuhi, told us about Housing New Zealand's Rural Housing Programme. It ran from 2001 to 2011, and contracted Māori providers to repair rural houses in Te Tai Tokerau and elsewhere. He said much of the programme's funds 'which should have gone into fixing up houses' instead went into administering the scheme'. This meant the programme did not deliver on its 'goal . . . to eliminate sub-standard housing in these areas . . . and the problem persists to this day'. The programme was succeeded by the Community Home Repair Programme, run by Te Puni Kōkiri's Māori Housing Network, but the demand for repairs across the rohe exceeded the funds available.[278] Meanwhile, Kāinga Whenua loans were only available for those building on Māori land who met Kiwibank's lending criteria, which were challenging for people with a bad credit history or outstanding fines.[279]

274. Document B34 (Donna Flower and Joanne Hammon), pp 1–2. The Bream Bay area includes Ruakākā, One Tree Point and Waipū.
275. Document B34 (Donna Flower and Joanne Hammon), p 6.
276. Document B34 (Donna Flower and Joanne Hammon), p 4.
277. Document B4 (Kelly Stratford), p 8.
278. Document B3 (Kara George), pp 2–3.
279. Document B3 (Kara George), pp 6–7; doc B4 (Kelly Stratford), p 6.

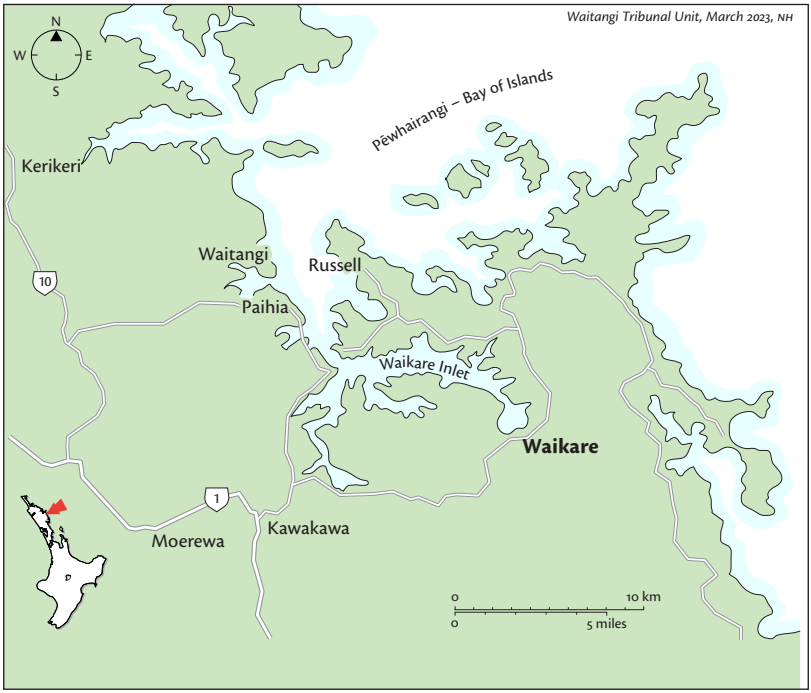
Ko te Turaki whare i Waikare / Demolition of State housing at Waikare

Kara George described the demolition of a State house in Waikare in November 2020.[1] Waikare is a rural settlement in Te Tai Tokerau; Mr George called it a 'little old place in the back of nowhere'.[2] It falls within the Russell Forest–Rawhiti statistical area, which had a population of 762 in the 2018 census.[3]

The house in question was built in the 1980s and was one of six State houses in Waikare; five were tenanted, but the last had been unoccupied 'for at least five years' because the piles had sunk and had not been repaired'.[4] Mr George said it was frustrating to see the house stand empty while local families lived in overcrowded housing. Some had asked if the house and its land could be used, and Mr George contacted Kāinga Ora about getting the house repaired. But soon after, 'a truck arrived and crushed it and now it's an empty space'.[5]

Kelly Stratford of the Waikare Marae Committee said Kāinga Ora demolished the house 'without any conversation'. People who had lived in it were 'really grieving' its loss. She said Kāinga Ora had confirmed that the house would not be rebuilt, and

1. Document B3 (Kara George), p 1.
2. Transcript 4.1.5, p 707.
3. Statistics New Zealand, 'Census place summaries: Russell', https://www.stats.govt.nz/tools/2018-census-place-summaries/russell, accessed 28 March 2023.
4. Document B3 (Kara George), p 5.
5. Transcript 4.1.5, p 707.



Waikare, Te Tai Tokerau

the agency would come and talk to hapū about what had happened. That would be 'a very, very delicate conversation', she said, as local people were 'not happy' about the demolition and failure to rebuild.[6]

In response to Tribunal questions, Kāinga Ora chief executive Andrew McKenzie said the Waikare State house had been demolished as it 'was in very poor condition and there has been no demand for this area, which has seen it being vacant since April 2013'. He also referred to difficulties in obtaining 'an accurate idea of demand for housing . . . for Waikare, as demand is predominately for Kawakawa and not the surrounding rural localities'.[7]

At the time our hearings ended, the site remained empty.

6. Transcript 4.1.5, pp 742, 748–749.
7. Document D3(h) (Andrew McKenzie responses to questions in writing), p 3.

2.9.4 He tauira o te kāinga kore i Tamaki-ki-te-Tonga / Urban homelessness: South Auckland

Witness Reina Penney said 'invisible homelessness' – manifest particularly in overcrowding and unaffordable housing – was a significant problem in South Auckland communities with high Māori populations. The 'working poor' were especially hard-hit, and 'it is mostly Māori who are working poor'.[280] Ms Penney said the working poor now comprised 'a significant proportion of homeless people'.[281] She cited an example:

> When I was eight months pregnant my husband myself and my two-year-old were given 24 hours to get out of a property. We were homeless. As we both worked, we were unable to access any support from any organization. The only way I could access support was through maternal mental health services (which is ridiculous in itself as the housing stress was the issue causing my poor mental health). That support saw me supported with a bond into a studio the size of a room. . . . The rent was $365 and because my husband had intermittent work, and I was on maternity leave we could not afford the rent as well as other bills. I knew that I could not risk not paying my bills or I would not get housing due to poor credit.[282]

The high cost of rent meant the family had to go without other essentials during this period.

Lorna McGarvey Payne, a social worker at Te Puea Marae, told us that the experience of homelessness often began when people had to live 'in overcrowded houses with whanau. Often there will be a family dispute and they are asked to leave.' Other witnesses also saw a strong correlation between overcrowding and homelessness in South Auckland. Sonya Panapa of Manurewa Marae pointed to the scarcity of suitable housing for whānau with many relatives; they needed 'a 5 plus bedroom home to adequately house everyone but there is a significant shortage of homes of that size. Or, if they are available, they are not affordable' (the average rent for a three- to four-bedroom house in poor condition was $600 to $700, which was beyond the reach of many whānau). Ms Panapa was aware of '15 whānau [living] in a 3-bedroom whare'. While such arrangements helped spread the cost of rent and utilities, they had 'severe impacts' on people's health. Some whānau 'just give up entirely . . . [and] come to the reality that they are better off living in their cars and finding a park or reserve'.[283]

Veronica Henare of the Manukau Urban Māori Authority spoke about other difficulties faced by those looking for rental accommodation. Her organisation tried helping whānau into private rentals, but the expense and large numbers of

280. Document B56 (Reina Penney), pp [4], [6].
281. Document B56 (Reina Penney), p [9].
282. Document B56 (Reina Penney), p [5].
283. Document B36 (Sonya Panapa), p [3].

applicants meant many did not succeed, especially if they could not provide positive references. Some encountered discrimination for being 'beneficiaries relying on the state' or simply because they had Māori surnames; they felt they had been 'put at the bottom of the list by private owners or not even considered at all', Ms Henare said.[284] Mary Moeke-Te Purei told us about applying for approximately 40 private rental properties and being rejected every time: 'I was beginning to think that my having a moko kauae, and my being Māori and a single parent did not appeal to the property managers and owners.'[285]

South Auckland had refuges for homeless people, but witnesses reported they were often full – as Ms Moeke-Te Purei and her children found in early 2018 after her marriage broke down: 'I tried to get lodgings or . . . a room to stay at Women's Refuges and safe houses, but there were no vacancies anywhere. The City Mission didn't cater for children, so that wasn't an option. Monte Cecilia and Merge Aotearoa were all full.'[286] She even contacted places outside Auckland, but with no luck. With nowhere else to go, Ms Moeke-Te Purei and three of her younger children slept in a van for three weeks. Once, they parked near her workplace in Ōtara so they could use the kitchen and bathroom. Another time, they slept near the library on Dawson Road because the Christmas tree lights 'made me feel safe and the kids seemed to feel comfortable there too', she said.[287] But the experience was generally 'very uncomfortable and scary':

> One night, as we slept, I woke because a woman knocked on the window for a cigarette. I drove away. Another night we were all woken by a group of youths, who had started fighting and one was held up on our van and threatened. I beeped the horn loudly and then drove off quickly with my 3 boys.[288]

Claimant Debbie Munroe, who has supported homeless people in Manurewa for many years, also emphasised the vulnerability that went with homelessness:

> We hear horror stories of rape of our tane, wahine, and rangatahi. Police drive directly up to the homeless, turn on their flashing lights to wake them up, and arrest them for sleeping on the street. Right now, there is a group of 10 minors living at the back of Manurewa library. There are young girls in this group, who are so vulnerable.[289]

2.9.5 Ngā rongoā a ngā hapori / Community-led responses

2.9.5.1 *Marae and community initiatives in South Auckland*

When Te Puea Marae started offering homelessness services in 2016 – detailed in section 2.5.1 of chapter 2 – it was a response to 'the need of [homeless whānau] in

284. Document B15 (Veronica Henare), p 8.
285. Document B85 (Mary Moeke-Te Purei), pp 4–5.
286. Document B85 (Mary Moeke-Te Purei), p 3.
287. Document B85 (Mary Moeke-Te Purei), p 2.
288. Document B85 (Mary Moeke-Te Purei), p 2.
289. Document B39 (Debbie Munroe and Troy Oliver), p 13.

the Mangere area and the fact that the National Government said homelessness wasn't an issue in Aotearoa.'[290] When Te Puea was unable to meet the immediate demand for assistance, Manurewa Marae stepped in to help.[291] The Manukau Urban Māori Authority has also had a close working relationship with Te Puea Marae, providing additional wraparound support services to those in need.[292]

An important feature of these community responses has been the presence of Ministry of Social Development staff on site at the two marae. Lorna McGarvey Payne of Te Puea Marae said whānau appreciated this innovation:

> Ka whakamohio atu ana ahau ki tetahi o nga whanau kua mutu ta ratou haere ki [Work and Income], kei konei katoa e whakahaeretia ana nga ahuatanga e pa ana kia ratou, kua mea mai ratou, 'te tino pai ke hoki.' Ka kite tonu atu koe i te mahea mai o o ratou ahua.
>
> When I say to a person that they don't need to go to [Work and Income] anymore, that they can do their business [at the marae], they say 'oh thank goodness'. They are so relieved you can see the stress come off their faces.'[293]

Sonya Panapa of Manurewa Marae told us that a Ministry of Social Development social worker had been on site since August 2020:

> Over a period of about five to six weeks in August 2020, we had 189 people from the Manurewa community that [the social worker] supported. I think it is important to note that those 189 people are whānau that don't go to [a Ministry of Social Development] office, but come to the Marae.[294]

But aside from working with the Ministry of Social Development in this way – and despite the fact that, at the time of our hearings, most homeless whānau approaching Te Puea Marae for help had been referred by Work and Income[295] – both marae received little Government assistance for their work. For example, Alanah Baker, a financial mentor working with people at Te Puea Marae, said that the Ministry of Social Development provided no funding for her services.[296] Manurewa Marae was unable to secure sufficient funding from the same Ministry to maintain the Whakapiki Ora programme the marae set up to support homeless people; the programme had to end in November 2016.[297] Nevertheless, Ms Panapa said that Whakapiki Ora had 'ongoing positive impacts', including the

290. Document B83 (Whitiao Paul), p 2.
291. Document B67 (Gail Wilson), pp [5]–[8].
292. Document B15 (Veronica Henare), pp 2–6.
293. Document B71 (Lorna McGarvey Payne), p 15.
294. Document B36 (Sonya Panapa), p [6].
295. Document B71 (Lorna McGarvey Payne), p 10.
296. Document B16 (Alanah Baker), pp [6]–[7].
297. Document B67 (Gail Wilson), p [8].

Māori Maps

Te Puea Memorial Marae in Māngere Bridge, South Auckland

establishment of an Emergency Transitional Housing service with 16 houses in Ōtara, Manurewa, and Papakura.[298]

Another community solution we heard about was Waka of Caring in Manurewa. Co-founder Debbie Munroe told us that she started it after seeing a Facebook post about youths 'drinking, fighting and upsetting the local community' attract responses including 'comments about shooting the kids, running them over and killing their parents'.[299] Ms Munroe and others began providing food for the young people, about half of whom were living on the street, and soon they were catering for older homeless people too.[300]

Her organisation has experienced many setbacks in trying to help the homeless.[301] But even without financial backing, Waka of Caring has continued. At the time of our hearings, it had a drop-in centre in Manurewa, which Ms Munroe said received an average of 135 visits per day.[302]

2.9.5.2 *Rhonda Zielinski-Toki and Te Whakamanamai Whanau Trust, Kaikohe*

Te Whakamanamai Whanau Trust was formed by five Kaikohe locals in 2020. They included witness Rhonda Zielinski-Toki, who became aware of Kaikohe's

298. Document B36 (Sonya Panapa), p [5].
299. Document B39 (Debbie Munroe and Troy Olliver), p 2.
300. Document B39 (Debbie Munroe and Troy Olliver), pp 2–3.
301. Document B39 (Debbie Munroe and Troy Olliver), pp 2–4.
302. Document B39 (Debbie Munroe and Troy Olliver), pp 4, 6.


Radio New Zealand/Cole Eastham-Farrelly

Portable cabins at Te Puea Memorial Marae that provide accommodation for the homeless

homelessness problem when she established the Whakaoranga Whānau Recovery Hub with Jane Beamsley in February 2020. They noticed that the people needing help with alcohol and drug addiction were also homeless.[303]

Ms Zielinski-Toki said that many homeless whānau in Kaikohe had 'other deeper underlying issues'. Some had been asked to leave rental accommodation and had nowhere to go, others could not sustain rents, and some were leaving abusive relationships. The Trust offered 'ongoing support and services to help their health and welfare overall'.[304]

Through its programme Whare to the Whenua, the Trust began purchasing portacoms off local supplier Space King for $25,000 each and placing them on whānau land (as Ms Zielinski-Toki noted, 'many of our Māori whānau had land but they were homeless which seemed quite ironic to us').[305] Portacoms are small, portable, transportable buildings usually used as offices and lunchrooms. However, Victor Smith of Space King said they were also a 'great thing' for people without homes. The Trust's portacoms were basic accommodation, but were fitted with vinyl or carpet flooring and had electrical certification.[306] As Ms Zielinski-Toki said during hearings, 'It may not be seen as a home to many of you in this

303. Document B2 (Rhonda Zielinski-Toki), p 1; doc B2(a) (Rhonda Zielinski-Toki), p [20]; 'Tātou tīma he hui mai!', Whakaoranga Whānau Recovery Hub, https://www.wowhub.co.nz/team, accessed 1 December 2022.
304. Document B2 (Rhonda Zielinski-Toki), p 2.
305. Document B2 (Rhonda Zielinski-Toki), p 6; transcript 4.1.5, p 721.
306. Document B2(a) (Rhonda Zielinski-Toki), pp [25]–[26].

Rhonda Zielinski-Toki giving evidence during the inquiry

room but when you've been living in a car or under a park bench or under a tree it is actually received as an amazing gift'.[307] Given the urgent need for houses in Kaikohe, portacoms were an ideal solution, because 'the product was instant, and it was ready to be occupied straight away'.[308]

Portacoms also brought 'a bit of security' to whānau, she told us.[309] Depending on whānau needs, they could be either a permanent or a temporary housing solution.[310] The Trust rented them out based on what whānau could afford. Renters could also choose to be part of 'Rent to Bless', the Trust's rent-to-buy programme.[311] If they could pay $200 per week in rent, it would take them around two years to own the portacom, we were told.[312] In February 2021, after a year's operation, the Trust had 22 portacoms. All were occupied and ten stood on whānau land. So far the Trust had housed over 100 people.[313]

Te Whakamanamai Whanau Trust's work and services were self-funded, we heard. This had some benefits, according to Ms Zielenski-Toki: 'we can do things our own way and come up with our own solutions rather than working to the government's agenda'. However, the lack of Government funding was also 'frustrating',

307. Transcript 4.1.5 (Rhonda Zielinski-Toki), p 721.
308. Document B2 (Rhonda Zielinski-Toki), p 2.
309. Document B2(a) (Rhonda Zielinski-Toki), p [37].
310. Document B2 (Rhonda Zielinski-Toki), p 2.
311. Document B2 (Rhonda Zielinski-Toki), p 2.
312. Document B2(a) (Rhonda Zielinski-Toki), p [36].
313. Document B2 (Rhonda Zielinski-Toki), pp 1, 3.

considering 'how great the need is for housing in Northland and just how little has been done by the government to fix it'. When the Trust approached Te Puni Kōkiri for funding, they were told that the Trust had not been in business long enough to receive help.[314]

Meanwhile, Ms Zielenski-Toki emphasised that 'not a day goes by where people are not ringing or visiting us'. Some were sent by other organisations struggling to house people, and an increasing number were referred by the Department of Corrections because they needed bail or release addresses.[315] In December 2020, the Trust had over 100 people on its waiting list, and this 'demand shows the Government needs to do way more to help our whānau', she said.[316]

2.9.5.3 *Ricky Houghton and He Korowai Trust, Kaitāia*

Tātai whetū ki te rangi, mau tonu, mau tonu
Tātai tangata ki te whenua, ngaro noa, ngaro noa
E Ricky kua ngaro nei koe ki te pū o mahara

Kua kore koe i te tirohanga tangata
Kua kore koe i te pūao o te ata tū
Tē kite i te mutunga o ngā mahi, te rongo i te tutukinga o ngā moemoea.
Ma nga haumauiui o tenei kaupapa koe e hahu mai ano
Ka rangona tonutia tō reo e ngā rau o te pūrongo

He aha mā mātou?
He tangi, he mihi, he poroporoaki
E moe, i te moenga roa, ki reira okioki ai

While the starry hosts above remain unchanged and unchanging
The earthly world changes inevitably with the losses of precious, loved ones
Ricky you who have been lost to the void of memories

You are lost from sight
You will not see the dawn of a new day
You who will not see the completion of your work nor hear of
the achievement of your dreams
You are remembered through the fruit of your toil
Your voice is heard in the pages of our report

What are we left to do?
Grieve, acknowledge, farewell
Rest now in peace

314. Document B2 (Rhonda Zielinski-Toki), p 7.
315. Transcript 4.1.5, p 725.
316. Document B2(a) (Rhonda Zielinski-Toki), pp [29], [36].

Stuff Ltd

Ricky Houghton outside He Korowai Trust's papakāinga

He Korowai Trust is a social service provider in Kaitāia, Te Tai Tokerau. Founder and chief executive Ricky Houghton told us that the Trust offered housing solutions including emergency accommodation, transitional housing, shared or group accommodation for those who had been in transitional housing for some time, and rent-to-buy home ownership. The Trust also helped people put houses on Māori land, and supported tenants at risk of eviction to resolve conflicts with landlords.[317]

Despite a clear need for its services, Mr Houghton estimated 'at least 40% of [the Trust's] housing work is not funded by either the government or the government bank [Kiwibank]'. Many unfunded costs were covered from his own pocket – for example, to help start the Trust's Whare Ora housing project, he had remortgaged his home for $300,000. This enabled the Trust to 'purchase European land, which we then converted into Maori land using my Te Paatu whakapapa'. With a $600,000 Government loan, the Trust then relocated unwanted State houses from Tāmaki Makaurau to Kaitāia. They were refurbished and redecorated, and the site became the Trust's Kohuhu papakāinga, which comprised 19 completed houses at the time of our hearing.[318] Mr Houghton remortgaged his home again to purchase the Kaitāia Hotel under mortgagee sale; it was refurbished and turned into emergency accommodation.[319]

317. Document B89(a) (Ricky Houghton appendices), p [77]; doc B89 (Ricky Houghton), p 2.
318. Document B89 (Ricky Houghton), p 4.
319. Document B89 (Ricky Houghton), pp 4–5.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He Korowai Trust's Kohuhu papakāinga in Kaitāia, Te Tai Tokerau

Mr Houghton told us that He Korowai Trust also provided 24/7 accommodation for people on bail or home detention who, because of a lack of approved facilities in Te Tai Tokerau, could otherwise not come home.[320] Without this accommodation, they would have to stay in prison or even be 'forced into homelessness, and, sadly, some end up back in prison as a result'.[321] The Trust also had a 12-bed specialised unit for released prisoners returning to their communities (discussed further in section 4.4.3.1).[322]

Reflecting on his many years of work with communities in Te Tai Tokerau, Mr Houghton acknowledged the Trust's 'strong credible working relationship with senior officials across the housing related ministries'.[323] However, he considered that the Government was not 'satisfactorily addressing the impoverished second-class housing status of Northland Māori' and he was 'disillusioned, disappointed and dissatisfied' by its refusal to consider Northland's needs a funding priority.[324] He had found that 'for someone like me or an entity like [He Korowai Trust], there is no position available . . . to play out on the field according to rules the government has set'.[325]

320. Document B89(a) (Ricky Houghton appendices), p [49]; doc B89 (Ricky Houghton), pp 3, 20.
321. Document B89 (Ricky Houghton), p 21.
322. Document B89 (Ricky Houghton), pp 6, 21.
323. Document B89 (Ricky Houghton), 6.
324. Document B89 (Ricky Houghton), pp 6, 14.
325. Document B89 (Ricky Houghton), p 13.

CHAPTER 3

NGĀ MĀTĀPONO O TE TIRITI / TREATY PRINCIPLES

3.1 Introduction

In this chapter, we establish those treaty principles we consider most relevant to the homelessness stage of the Housing Policy and Services inquiry. These principles (and any related duties and standards) will inform our analysis of the central issues for determination in the next chapter, and our findings.

As is the case with all Tribunal reports, our thinking about the relevance and application of treaty principles is shaped to some degree by what has gone before. This chapter therefore starts by surveying previous Tribunal jurisprudence. First, what have past Tribunal reports said about contemporary Māori housing issues and the provision of social services by the State more generally? Secondly, what treaty principles, duties, and standards has the Tribunal previously identified as relevant when considering these issues? We then turn our attention to the views of the parties in this inquiry, and the treaty principles they argued are most relevant to the key issues. Finally, having taken account of the jurisprudence and the submissions of the parties, we set out those treaty principles we consider apply to the claims and issues before us.

3.2 What the Tribunal has Previously Said

3.2.1 On contemporary Māori housing and well-being

Māori housing policy and conditions have featured in some previous Tribunal reports, chiefly in the context of district inquiries. However, the issue of contemporary Māori homelessness has yet to be considered either in depth or on a national scale.

In these district-focused reports, the Tribunal has typically discussed housing conditions (and, to a lesser extent, housing policy and legislation) as part of its thematic assessment of claims related to social welfare provision, health, and socio-economic outcomes. Some of the evidence informing those assessments has been especially powerful and immediate. For example, in 1997 during the Mohaka ki Ahuriri inquiry, Tribunal members made a site visit to Mōhaka where they

> witnessed firsthand the living conditions of the local people, many of whom had returned from the cities and were effectively squatting on multiply owned land. Most New Zealanders would associate some of the housing we saw with shanty dwellings in the third world – homes were constructed from old caravans, tarpaulins, and

corrugated iron. Many dwellings were simply relocated railway workers' huts dating from the era of the development scheme and were quite unsuitable for families.[1]

As many of the findings made by the Tribunal in the district reports are location-specific, it is not helpful to discuss these in depth. Nonetheless, they raise some themes and conclusions that are relevant to the national issue of contemporary Māori homelessness currently before us and to broader issues to be covered in a later stage of our inquiry. One is the fundamental connection between housing, and health and well-being. In addition, sub-standard Māori accommodation has been characterised as both a reflection and perpetuator of prejudice stemming from land-related treaty breaches. In particular, the Tribunal has emphasised the Crown's duty, under article 3 of the treaty, to treat Māori and non-Māori equitably. The Crown has been found to have breached the principle of equity where it failed to provide housing and other social support proportionate to the Māori share of the population and their relative need.[2] As the Tribunal observed in its *Te Tau Ihu o te Waka a Maui* report (2008):

> Help for improving Maori housing was available from the 1930s, but the programmes were very slow to make an impression on the need. On the evidence available to us, there was a breach of the Treaty principle of equity in terms of the unequal assistance given to Maori in the early decades of social welfare.[3]

Poor housing was identified as an example of disparate social outcomes in the *Te Urewera* report (2015), where the Tribunal noted:

> the Crown has a duty to reduce socio-economic disparity. We have shown that Maori in Te Urewera have consistently suffered from worse health and housing, lower education levels, and higher rates of poverty than non-Maori. This means that, regardless of the reasons behind this disparity, the Crown has a duty to devote additional resources to reducing it. The Crown has failed to adequately carry out this duty, and partly as a result socio-economic conditions for Maori in Te Urewera remained far below those of the general New Zealand population, even in the mid-twentieth century . . . Providing the district with the same limited level of service as another rural area with a less disadvantaged population may be equal treatment, but it is not equitable.[4]

1. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 487.
2. See Waitangi Tribunal, *Te Manu Whatu Ahuru: Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2020), pt v, pp 59–65; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 2, p 1028.
3. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 2, p 1028.
4. Waitangi Tribunal, *Te Urewera*, 8 vols (Lower Hutt: Legislation Direct, 2015), vol 8, p 3774.

In district-focused inquiries the Tribunal has also regularly emphasised the right of Māori to healthy and culturally suitable housing in or close to their ancestral lands and traditional kāinga (settlements and communities).[5] The Tribunal has generally criticised the Crown's mid-to-late twentieth century policy of encouraging the urbanisation of the Māori population (and, by extension, disinvestment in rural communities) by focusing housing assistance on areas of targeted economic growth in cities and towns. The Tribunal, in reports including *Hauraki* (2006), *Te Tau Ihu o te Waka a Maui* (2008), *Tauranga Moana* (2010), and *Te Manu Whatu Ahuru* (2020), has argued that the Crown should have done more during the post-Second World War era to facilitate the development of rural and Māori-owned land. The Tribunal has characterised the Crown's failure to do so, while at the same time providing state assistance to non-Māori landowners and communities, as a breach of the principles of equity and autonomy.[6]

Beyond the district-focused inquiries, the Tribunal has not focused specifically on housing issues in any reports, and relatively few reports have focused on social service provision in the late twentieth and early twenty-first centuries. Among the first to do so was the *Te Whanau o Waipareira Report* (1998). It was released at a time when, the Tribunal commented, '[t]he proper application of Treaty principles to social policy is yet to be determined.'[7] Noting that housing was among the social services being delivered to the urban Māori community of West Auckland by the non-kin-based Te Whānau o Waipareira Trust, the Tribunal sought to determine 'how a proper equilibrium might be reached between the exercise of rangatiratanga in the social welfare field and kawanatanga.'[8] In its recommendations, the Tribunal said that Crown funding and policy agencies involved in delivering social services to Māori should 'deal with any Maori community which has demonstrated its capacity to exercise rangatiratanga in welfare matters, so that all interaction between Crown and community should enhance the exercise of that rangatiratanga.' The Tribunal urged the Crown to 'devolv[e] sufficient authority and resources to enable [the trust] to undertake a coordinated and holistic approach to community development' – not just so the organisation could properly exercise its treaty right of rangatiratanga but also:

5. See Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 3, p 901; Waitangi Tribunal, *The Turangi Township Remedies Report* (Wellington: Brooker's Ltd, 1998), p 88; Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, 3 vols (Lower Hutt: Legislation Direct, 2015), vol 3, pp 1167–1176.

6. Waitangi Tribunal, *Te Manu Whatu Ahuru: Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2020), pt v, pp 65–70, Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 2, p 815.

7. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: Legislation Direct, 1998), p 235.

8. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: Legislation Direct, 1998), p 235.

> on the grounds that those who deliver most effectively to Maori people are Maori communities which provide integrated services and utilise Maori holistic strategies; and on the grounds that the scale of the problem of Maori underdevelopment lends urgency to the need for a distinctive strategy to deal with it.[9]

The Tribunal has subsequently addressed social services in other reports and located inadequate Māori housing primarily in an article 3 context. It has described it as a symptom of, and contributing factor to, inequity between the Māori and non-Māori populations. In the *Napier Hospital and Health Services Report* (2001), the Tribunal discussed the application of the principle of equity to health, noting that, while health services can make an important difference in closing the health gap between Māori and non-Māori, other linked factors 'such as income inequality and housing standards, are commonly more influential'.[10]

Likewise, the Tribunal invoked the principles of active protection, equity, and options in *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (2019), considering the Crown's obligation to act 'to the fullest extent practicable, to achieve equitable health outcomes for Māori'. In our view, the question of equity in housing can be considered through the same lens.[11]

Overall, this body of jurisprudence offers us only limited guidance when it comes to determining which treaty principles are most relevant to the claims before us. Nonetheless, the jurisprudence has established the following general treaty standards that can be applied to the Crown's role in providing Māori housing in the contemporary era:

- The Crown has an obligation to provide housing and other social services to the Māori population on an equitable basis with the non-Māori population.
- The Crown has a duty to protect the Māori right to healthy and culturally appropriate housing on or close to their ancestral whenua and traditional kāinga, not just in an urban environment.
- The Crown should devolve authority and resources to Māori communities to deliver social services and exercise rangatiratanga.

3.2.2 On treaty principles and duties relevant to this topic

The Tribunal has inquired into issues, claims, and themes relevant to this inquiry in a number of previous reports – especially those addressing allegations of socio-economic disparity – and has consistently invoked certain treaty principles and duties: partnership, active protection, equity, equal treatment, consultation, options, and redress. Some of the Tribunal's most relevant statements about those principles are noted below.

9. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: Legislation Direct, 1998), pp 235–236.

10. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 64.

11. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p 163.

3.2.2.1 *The principle of partnership*

The Tribunal and the courts have found that the treaty established a relationship between Māori and the Crown akin to a partnership. In the years following the Court of Appeal's detailed articulation of the partnership principle in the *Lands* case (1987), jurisprudence framed the treaty as an 'exchange'. The Crown would recognise and actively protect Māori tino rangatiratanga over the lands, natural resources, taonga, and other properties guaranteed to them in article 2, and also the rights contained in article 3, in return for Māori having accepted the Crown's kāwanatanga, or right to govern, in article 1.

At the same time, the Tribunal has long emphasised that the treaty did not confer on the Crown unilateral power to make laws for Māori. Instead, rangatiratanga and kāwanatanga have been characterised as distinct forms of authority which constrained and balanced one another. Within the treaty partnership, neither could be absolute.[12]

The balancing exercise at the heart of the treaty partnership has been a frequent theme explored in Tribunal reports concerned with Māori well-being, policy formation, and service delivery. As noted already, in *Te Whanau o Waipareira* (1998) the Tribunal considered the balancing of rangatiratanga and kāwanatanga in the context of social service policy and delivery, concluding that it involved attention, good faith, generosity, and care from both treaty partners. In that report, the Tribunal likened the partnership between Māori and the Crown to a marriage in which

> broad and general vows express the desire and the intention of the parties to live together in mutual love and respect. The success of a marriage depends not on the ability of the parties to formulate or interpret vows advantageously to themselves, nor on their ability to enforce them in the case of dispute. Rather, it depends on their commitment to work through problems in a spirit of goodwill, trust, and generosity, actively seeking creative solutions, and taking opportunities to bolster each other.[13]

Just as the Tribunal described the treaty partnership as requiring ongoing dialogue in *Te Whanau o Waipareira*, it also characterised it as needing to be 'constantly rebalanced' in the *Ko Aōtearoa Tēnei* report (2011).[14] The whole-of-government and future-oriented guidance provided by the Tribunal in *Ko Aōtearoa Tēnei*, which focused on Māori culture and identity, stressed that a modern partnership would facilitate the involvement of Māori in policy decision-making that affected them. A failure to empower Māori to make decisions for themselves would result in poor policy outcomes. Specifically addressing the importance of safeguarding

12. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 208.

13. Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wellington: Legislation Direct, 1998), p 222.

14. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p 19.

the place within the education system of mātauranga and te reo Māori – taonga of 'transcendent importance' to Māori – the Tribunal concluded that there was a 'need for a partnership in which the State provides logistical and financial support and the Māori Treaty partner exercises decision-making responsibility'.[15] But in other contexts, where different kinds of taonga were involved and the nature and extent of the Māori interest also differed, the Tribunal acknowledged the treaty partnership might need to operate differently. In its 2012 report into the National Freshwater and Geothermal Resources Claim, for example, the Tribunal adopted the idea of a balancing process set out in *Ko Aōtearoa Tēnei* and applied it to water management: 'sometimes kaitiaki control will be appropriate, sometimes a partnership arrangement, and sometimes kaitiaki influence will suffice, depending upon the balance of interests (including the interest of the taonga itself)'.[16]

The Tribunal further developed the notion of the treaty partnership in *He Whakaputanga me te Tiriti: The Declaration and the Treaty*, the stage one report of the Te Paparahi o Te Raki District Inquiry (2014). It concluded that the rangatira who signed in 1840

> did not cede their authority to make and enforce law over their people or their territories. Rather, they agreed to share power and authority with the Governor. They agreed to a relationship: one in which they and Hobson were to be equal – equal while having different roles and different spheres of influence. In essence, rangatira retained their authority over their hapū and territories, while Hobson was given authority to control Pākehā.[17]

In its report on the Māori Community Development Act claim, *Whaia te Mana Motuhake*, released a year after *He Whakaputanga*, the Tribunal provided specific guidance about situations where these spheres of influence overlapped in the realm of social and community development. The Tribunal noted that a balance between the Crown and Māori should be struck through 'negotiation, conducted in the spirit of cooperation and tailored to the circumstances'.[18] Additionally, the Crown should

> demonstrate a willingness to share a substantial measure of responsibility, control and resource with its Treaty partner. In essence, the Crown must share enough so that Māori own their own vision, while at the same time ensuring its own logistical and

15. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, *Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 442, 559.

16. Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (Wellington: Legislation Direct, 2012), p 78.

17. Waitangi Tribunal, *He Whakaputanga me te Tiriti / The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wellington: Legislation Direct, 2014), p xxii.

18. Waitangi Tribunal, *Whaia te Mana Motuhake / In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim* (Lower Hutt: Legislation Direct, 2015), p 26.

financial support assists Māori capacity to achieve that vision. The Crown has a duty to protect Māori and an obligation to strengthen Māori to strengthen themselves.[19]

In 2019, the Tribunal, in its *Hauora* report, recommended that the Crown and Māori work together to co-design and deliver treaty-compliant health policy and services. It said the principle of partnership required the Crown to 'partner with Māori genuinely' in the design and delivery of other social services too, especially 'where disparities in outcomes exist'.[20] Pointing to the presence of such a power imbalance in the Crown-Māori relationship, the Tribunal commented that 'it is the Crown's Treaty responsibility to ensure that Māori are not disadvantaged in that relationship'.[21] The Tribunal made it clear that the requirement for the Crown to partner meaningfully with Māori in developing and implementing policy is especially relevant where Māori are expressly seeking an effective role in this process.[22] In discussing partnership in this broader context, the Tribunal also noted in *Te Whanau o Waipareira* that where one treaty partner seeks to exert more control over the development of social policy, the less the other is able to contribute and the less likely it is that social goals will be achieved.[23]

3.2.2.2 *The principle of active protection*

The principle of active protection flows from the treaty partnership. As noted above, the partnership principle involves the balancing of kāwanatanga, or the Crown's right to govern, with the right of Māori to exercise rangatiratanga.

As the Tribunal has previously made clear, the Crown is obliged to actively protect Māori rights and interests 'to the fullest extent reasonably practicable'.[24] This protective duty extends beyond property interests in the likes of land or water to encompass Māori 'interests in both the benefit and enjoyment of their taonga and the mana or authority to exercise control over them'.[25] In *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims* (2018), the Tribunal explained that active protection 'to the fullest extent reasonably practicable' means:

19. Waitangi Tribunal, *Whaia te Mana Motuhake/In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim* (Lower Hutt: Legislation Direct, 2015), p 29.

20. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), pp 28–29.

21. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p 28.

22. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), pp 28–29.

23. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: Legislation Direct, 1998), p 232.

24. For example, see Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed (Wellington: Waitangi Tribunal, 1989), ch 8.3; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington: Brooker and Friend Ltd, 1991), pp 135–136; Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report 1992* (Wellington: Brooker and Friend Ltd, 1992), pp 269–270. The Tribunal's wording reflects the Court of Appeal's in the seminal *Lands* case: *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 664.

25. Waitangi Tribunal, *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* (Wellington: Brooker and Friend Ltd, 1993), p 33.

> that the Crown cannot ignore, deny, or interfere with Māori communities' tino rangatiratanga, including authority over and relationships with people, lands, and taonga. But it also means that the Crown is positively obliged to protect and support Māori communities' tino rangatiratanga, for example, by putting in place legislative or administrative measures that support those communities' authority and relationships, if that is what the community wants.[26]

How far the protective duty extends depends on both the circumstances in which the duty must be discharged and the degree of practical influence the Crown is able to exert. As the Tribunal noted in the *Napier Hospital* report, the application of the principle of active protection has limitations where there is potential to infringe upon equality before the law and between peoples.[27] Notwithstanding, the Tribunal determined that where Māori suffer adverse outcomes (ill-health, in that case) disproportionately to non-Māori, they should be able to rely on the Crown taking protective action to address the disparity.[28]

3.2.2.3 *The principle of equity*

The principle of equity derives from article 3 of the treaty, which guarantees Māori the same rights as British subjects – which, in the modern context, means the same as all other New Zealand citizens. As the Tribunal made clear in *Te Mana Whatu Ahuru*, historically the Crown could not favour settlers over Māori at an individual level, nor could it favour settler interests over the interests of Māori communities. The rights that were conferred on the Crown through the treaty also imposed on it a duty to treat Māori equitably when exercising its kāwanatanga.[29] As the Tribunal said in *Tauranga Moana, 1886–2006*, 'Māori are entitled to the full rights and privileges of all other citizens, and the Crown is required to act fairly to all groups of citizens.'[30]

The Tribunal has previously commented that the principle of equity may 'require positive intervention by the Crown to address disparities'.[31] The manifest disparities in the health of Māori and non-Māori, and the adequacy of the Crown's response to them, was a focus of the *Napier Hospital* report. It identified equity of health outcomes – and not just equal standards of healthcare – as 'one of the expected

26. Waitangi Tribunal, *Te Mana Whatu Ahuru: The Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2018), pt 1, p 184.
27. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 54.
28. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 55.
29. Waitangi Tribunal, *Te Mana Whatu Ahuru: The Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2018), pt 1, p 185.
30. Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, p 25.
31. Waitangi Tribunal, *Tū Mai te Rangi! Report on Crown and Disproportionate Reoffending Rates* (Lower Hutt: Legislation Direct, 2017), p 27.

benefits of the citizenship granted by the Treaty'. Achieving equity required the Crown to focus on more than health services, because services alone 'can deliver only part of the package leading to equal health outcomes'.[32] The Crown must also tackle the many other socio-economic, environmental, and cultural factors that contribute to Māori disadvantage, the Tribunal said, as an integrated and broader 'equity-based response' was required.[33]

In *Hauora*, the Tribunal again considered the principle of equity in the context of health services, noting:

> At its core, the principle of equity broadly guarantees freedom from discrimination, whether this discrimination is conscious or unconscious. Like active protection, for the Crown to satisfy its obligations under equity, it must not only reasonably ensure Māori do not suffer inequity but also actively inform itself of the occurrence of inequity.[34]

Actively pursuing equitable outcomes for Māori meant the Crown is obliged to provide the health services Māori need.[35] As in the *Napier Hospital* report, the Tribunal found in *Hauora* that it was not enough for the Crown just to provide equal standards of services or treatment, as Māori might still suffer inequitable health outcomes because of wider systemic problems. Accordingly, the Crown should 'make every reasonable effort to eliminate barriers to services that may contribute to inequitable health outcomes'. Any failure to remove those barriers would be inconsistent with the principle of equity.[36] The Tribunal emphasised that the Crown's treaty obligations to ensuring Māori health were 'especially heightened' due to the gravity of the persistent inequities between Māori and non-Māori.[37]

3.2.2.4 *The principle of equal treatment*

Although sometimes conflated with the principle of equality, the two are distinct. The principle of equal treatment concerns the Crown's obligation to act fairly between Māori groups. This means the Crown must avoid unfairly advantaging one group over another 'if their circumstances, rights, and interests [are] broadly the same'. It must also 'act in a way that allows Māori groups to maintain amicable

32. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 64.
33. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 63–64.
34. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p 34.
35. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p 34.
36. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), pp 34–35.
37. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p 37.

relations' without creating or exacerbating divisions between them.[38] But, like the principle of equity, the Tribunal has found that equal treatment does not mean 'treating all citizens or groups exactly the same, where they have different interests, populations, leadership structures, and preferences. Tino rangatiratanga must be respected.'[39] The Crown's obligation to treat Māori groups equally and fairly is understood to arise from the principles of partnership, reciprocity, autonomy, and active protection. It too is integral to the article 3 guarantee of citizenship rights to Māori.

Much Tribunal jurisprudence on the principle of equal treatment arises from its inquiries into historical land claims. The Tribunal has described native land legislation as 'so complex, inefficient and contradictory as to be inconsistent with the equal treatment guarantee under article 3'.[40] It has found that the legislation enabled a land administration and purchasing regime that regularly advantaged certain Māori individuals or groups at the expense of others.[41] The Tribunal has also identified instances where the Crown failed to give one tribal group the degree or kind of active protection it gave another, apparent (for example) in its uneven treatment of 'defeated peoples' following conflict.[42] In such situations, the Crown's failure to apply the principle of equal treatment when 'returning' confiscated lands widened rifts that had already developed between certain hapū during the war with the Crown, the Tribunal said in its *Tauranga Moana* report.[43]

The Tribunal has also addressed the principle of equal treatment when inquiring into Crown settlement processes, finding treaty breaches in several cases.[44] In the *Tāmaki Makaurau Settlement Process Report*, the Tribunal described the

38. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 5; Waitangi Tribunal, *Te Mana Whatu Ahuru: The Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2018), pt 1, p 185.

39. Waitangi Tribunal, *Whaia te Mana Motuhake: Report on the Māori Community Development Act Claim* (Lower Hutt: Legislation Direct, 2015), p 32.

40. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 469; see also Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 2, pp 539–540.

41. For example, the Tribunal found Māori in Te Rohe Pōtae were prevented from exercising tino rangatiratanga over their land by legislative barriers of unique severity – restrictions on selling or leasing their land that 'applied only to Te Rohe Pōtae Māori, not to other Māori or Europeans', and thus breached the principles of both equal treatment and equity: Waitangi Tribunal, *Te Mana Whatu Ahuru: The Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2018), pt II, pp 1361–1363, 1397, 1399, 1414, 1443.

42. For example, the Tribunal commented on the Crown's disregard for the land rights of 'defeated peoples' in Te Tau Ihu compared with their treatment in Taranaki, where the governor intervened 'to supply justice to more powerful tribes that were a greater threat to European settlement': Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, pp 268–269.

43. Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), p 301.

44. For example, Waitangi Tribunal, *Te Arawa Mandate Report: Te Wahanga Tuarua* (Wellington: Legislation Direct, 2005), p 97; Waitangi Tribunal, *The Maniapoto Mandate Inquiry Report* (Lower Hutt: Legislation Direct, 2020), p 96.

Crown's approach to deciding who it negotiates with, and the processes it follows, as effectively a strategy of 'picking winners. Winners are groups who appear to offer the best chance of being able to deliver their constituency to a significant settlement.' Unfortunately, the Tribunal said, the effect in Tāmaki Makaurau had been to create new grievances among those groups the Crown has not picked – other tangata whenua groups in the district who now felt 'like losers'.[45] Similarly, the Tribunal drew on an earlier inquiry into the Ngati Awa Settlement in its *Maniapoto Mandate Inquiry Report*, saying the Crown had an 'honest broker' role to play: 'it should be proactive in ensuring that arriving at settlements does not come at the cost of deteriorating already fragile relationships within and between iwi'.[46]

The Tribunal has invoked the principle of equal treatment when addressing the treaty compliance of contemporary legislation and policy. In its urgent inquiry into the Crown's proposed foreshore and seabed policy in 2004, the Tribunal found that the policy failed to honour article 3 – the guarantee that Māori had the same rights as all citizens to equal treatment under the law.[47] Not only would the proposed policy 'expropriat[e]' the private property rights of Māori only (a breach of the principle of equity), but it would also affect different groups of Māori differently, the Tribunal said:

> [A] government that denies coastal tribes the ability to own fee simple of the foreshore and seabed, but at the same time enters into arrangements that recognise equivalent rights in other tribes (such as the right to own a lakebed in fee simple) is in breach of the principle of equal treatment. Coastal tribes are not being treated equally with other classes of property owners, or with other tribes.[48]

In its report into the Crown's review of the Māori Commmunity Development Act 1962, *Whaia te Mana Motuhake*, the Tribunal repeated earlier findings that 'the Crown should not allow one group of Māori an unfair advantage over another', adding that it should also 'be clear as to who its Treaty partner is' when dealing with a range of groups.[49]

3.2.2.5 *The duty of consultation*

Tribunal jurisprudence has established that the Crown has a duty to consult with Māori on matters of importance to them, although the duty is not absolute,

45. Waitangi Tribunal, *The Tamaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2007), pp 12–13.

46. Waitangi Tribunal, *The Maniapoto Mandate Inquiry Report*, p 18; see also Waitangi Tribunal, *The Ngati Awa Settlement Cross-Claims Report* (Wellington: Legislation Direct, 2002), pp 87–88.

47. Waitangi Tribunal, *Report on Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), p 129.

48. Waitangi Tribunal, *Report on Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), p 134.

49. Waitangi Tribunal, *Whaia te Mana Motuhake: Report on the Māori Community Development Act Claim* (Lower Hutt: Legislation Direct, 2015), p 32.

open-ended, or mandatory. Drawing on the court's findings in the *Lands* case, the Tribunal has found that when the Crown makes decisions with Treaty implications, it must ensure it has 'sufficient information'.[50] If it does not, consultation with Māori 'is strongly indicated'. Even if the Crown believes it does have adequate information, consultation may still be required and it may need to be extensive.[51] Here, the Crown must be mindful of the significance of the decision being made – not its significance to the Crown, but to Māori who might be affected.[52] Thus, the Tribunal found in *Ko Aotearoa Tēnei*, 'the Treaty standard for Crown engagement with Māori operates along a sliding scale' according to the magnitude of the Māori treaty interest.[53]

Consultation is more than just a way for the Crown to inform itself before making decisions affecting Māori. Importantly, 'it also serves as a tool to engage with Māori and to demonstrate good faith', the Tribunal said in its report on the wreck of the Rena on Motiti Island in 2015.[54]

The duty of consultation has been commonly associated with the principles of active protection and partnership. In the *Napier Hospital* report, the Tribunal identified multiple points of connection with these and other principles: active protection requires the Crown to inform itself adequately in order to exercise powers of sovereignty fairly and effectively; partnership cannot proceed in ignorance of the views of Māori; the equitable delivery of Government services requires information from those receiving them; and the design of bicultural options requires information from Māori. Consultation is also part of the duty to protect rangatiratanga. However, the Tribunal also acknowledged that the Crown's duty to consult may be limited by 'operational considerations'.[55]

The Tribunal has considered what constitutes reasonable, robust, and treaty-compliant consultation on many occasions. It has emphasised that what is reasonable is situation-specific and depends on factors including 'the likely effects of the policy, action, or legislation'.[56] While consultation need not take any prescribed

50. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: GP Publications, 1991), vol 2, pp 244–245; see also *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 663 (CA), p 683.

51. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 68; Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: GP Publications, 1991), vol 2, p 245.

52. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 68.

53. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p 237.

54. Waitangi Tribunal, *The Final Report on the MV Rena and Motiti Island Claims* (Lower Hutt: Legislation Direct), 2015, p 16.

55. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 67–68.

56. Waitangi Tribunal, *The Final Report on the MV Rena and Motiti Island Claims* (Lower Hutt: Legislation Direct, 2015), p 16.

form, it must be 'meaningful and useful'.[57] In its report on the reform of the Te Ture Whenua Maori Act 1993, the Tribunal asserted that quality consultation involved meaningful discussion:

> Consultation does not mean to tell or present. Consultation must be a reality, not a charade. . . . The party consulting must keep an open mind and, while entitled to have a work plan in mind, must be ready to change and even start afresh. . . . Those being consulted must know what is being proposed, and have a reasonable and sufficient opportunity to respond to the proposal.[58]

In the *Napier Hospital* report, the Tribunal said that 'separate and specific' consultation with Māori – alongside general public consultation – was warranted when the Crown's treaty obligations were involved. Without it, 'Crown agencies may find it difficult to inform themselves adequately of Maori views, to respect the rangatiratanga of affected Maori groups, and thus to meet their protective and partnership obligations'. Moreover, the consultation 'should take appropriate account of Maori expectations and preferences'. Direct communication, ideally kanohi ki te kanohi, was preferable to passive 'consultation by document'. The report went on to list criteria for Crown agencies to take into account when considering whether, when, and how to carry out consultation with Māori; these included a 'demonstrable commitment not just to inform but to listen and discuss'.[59]

3.2.2.6 *The principle of options*

The principle of options flows from the principles of partnership, active protection, and equity. It recognises the right of Māori to choose their social and cultural path, whether by living according to their own tikanga, participating in settler society and culture, or walking 'in two worlds'.[60] The *Napier Hospital* report explicitly linked the multiple pathways that the treaty 'opened up' for Māori to articles 2 and 3: 'Under article 2, they were guaranteed self-management of tribal resources according to their own tikanga. Article 3, by contrast, gave Maori access to the society, technology and culture of the settlers.'[61]

The Tribunal stated in *Te Tau Ihu o te Waka a Maui* that it was inherent in the relationship forged between the Crown and Māori that, when settlement and the

57. Waitangi Tribunal, *The Final Report on the MV Rena and Motiti Island Claims* (Lower Hutt: Legislation Direct, 2015), p 31.

58. Waitangi Tribunal, *He Kura Whenua ka Rokohanga: Report on Claims about the Reform of the Te Ture Whenua Māori Act 1993* (Lower Hutt: Legislation Direct, 2016), p 153. Here, the Tribunal was referring to a Crown submission in which it summarised the Court of Appeal's decision in the *Wellington Airport* case.

59. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 72–74.

60. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 3rd ed (Wellington: GP Publications, 1996), p 195.

61. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 48.

new society developed, Māori would have options as to how they wished to live. These options were to be free and unconstrained.[62] More recently, the Tribunal noted in the *Hauora* report the importance of ensuring those options were properly resourced:

> [I]n its modern application, the principle of options requires that the Crown must adequately protect the availability and viability of kaupapa Māori solutions in the social sector as well as so-called mainstream services in such a way that Māori are not disadvantaged by their choice. In terms of health services, the Crown has a Treaty duty to enable Māori to have available the options of Māori or mainstream providers as they wish, and that either or both of these pathways are ensured equitable protection by the Treaty. Both pathways should be sufficiently supported by the Crown, meaning that each option offers a genuine, well-supported choice for Māori.[63]

3.2.2.7 *The principle of good government*

Like the principles of equity, equal treatment, and options, good government (or 'governance') derives from article 3; all are necessary components of its assurance to Māori of equal citizenship rights. Put simply, 'the Treaty principle of good government requires the Crown to keep its own laws and not to act outside the law', the Tribunal stated in *He Maunga Rongo*.[64]

The Tribunal, in its *Maori Development Corporation* report, discussed the principle in terms of reciprocal exchange. In signing the treaty, Māori made 'the gift of governance to the Crown' and, in return, 'it is reasonable to assume that Maori would receive good governance and laws and policies that would be beneficial to them all'.[65] Elsewhere, the Tribunal has characterised good government as an expression of the Crown's fiduciary duty to Māori. As part of that duty, where Māori were 'adversely affected by the process of colonisation', the Crown had a responsibility 'to correct that imbalance by affirmative action'.[66]

In part 1 of *Te Mana Whatu Ahuru*, the Tribunal explained how the principle of good government expressed a treaty partnership founded in ongoing negotiation and dialogue:

> In any negotiations over laws and institutions to give effect to kāwanatanga and tino rangatiratanga, neither party could impose its will. These matters could only be worked out through ongoing dialogue and partnership, in which the parties acted

62. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 5.
63. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p 35.
64. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, vol 2, p 429.
65. Waitangi Tribunal, *Maori Development Corporation Report* (Wellington: Brooker's Ltd, 1993), pp 31–32.
66. Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report* (Wellington: Legislation Direct, 1999), pp 51–52.

with the utmost good faith. From this are derived the principles of partnership and good governance.[67]

The Tribunal also emphasised that good government meant the Crown being accountable for its actions and subject to independent scrutiny.[68] In Te Rohe Pōtae, the Tribunal found the Crown breached the principle of good government when, after the Waikato War, its confiscations included lands that did not meet criteria stipulated in its own legislation.[69]

In the same report, the Tribunal also applied the principle to its analysis of contemporary environmental management and heritage issues, and found:

> Current environmental statutes and policies do not adequately meet appropriate Treaty standards and must be amended and the continued failure by the Crown to address these matters is a breach of the principle of good government. Ultimately, the Crown is responsible for the policy and legislation that was not put in place in partnership with Te Rohe Pōtae Māori, nor in adequate consultation with them.[70]

Tribunal reports into treaty settlement issues have also examined Crown actions in light of the principle of good government. In the *Hauraki Settlement Overlapping Claims Inquiry Report*, for example, the Tribunal referred to the *Red Book*, which purports to set out the policies, processes, and practices the Crown follows during settlement negotiations – for example, its approach to negotiating redress involving areas where groups have overlapping interests. The Tribunal emphasised its many previous findings about the deficiencies of the *Red Book* – notably in the *Tāmaki Makaurau Settlement Process Report* where, more than 12 years earlier, it had recommended amending the *Red Book* to ensure the Crown's policies and practices were treaty compliant and fair. But the Crown had not implemented the recommendation and the *Red Book* remained (in the words of the Tribunal in its *Hauraki Settlement* report) a 'vague, unhelpful, and inaccurate' statement of Crown policies and practices. Moreover, the Tribunal found that, in reality, the Crown did not even necessarily do what the *Red Book* said it would. Instead, claimants engaged in settlement negotiations 'found themselves subject to a mysterious and ever-changing pool of Crown practices, decisions, and personnel' with the Crown adopting 'an array of ad hoc practices that were neither consistent

67. Waitangi Tribunal, *Te Mana Whatu Ahuru: The Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2018), pt 1, p 183.
68. Waitangi Tribunal, *Te Mana Whatu Ahuru: The Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2018), pt 1, p 189.
69. Waitangi Tribunal, *Te Mana Whatu Ahuru: The Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2018), pt 1, pp 363–364, 586.
70. Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2020), pt 1v, p 395.

with its own policies and principles nor Treaty compliant'.[71] The Tribunal's recommendations included, again, making specific amendments to the *Red Book*.[72]

The Tribunal's findings in *Hauora* are especially pertinent to this inquiry. The Crown must '"meet a basic standard of good government", by acting in accordance with its own laws and ensuring that Māori rights and privileges as citizens have the protection of the law in practice', the Tribunal said.[73] To this end (and quoting the Tribunal's findings in *Te Mana Whatu Ahuru*), the Crown 'should be accountable for its actions in relation to Māori and subject to independent scrutiny'.[74] The Tribunal found that the dire health status of Māori – which was the worst of any population group in New Zealand – required the Crown to urgently commit itself (and the legislation, policy, and health care framework it was responsible for) to achieving equity of health outcomes for Māori. The fact that the Crown had not done so 'constitute[d] breaches of the Treaty principles of partnership, active protection, and equity and the duty of good governance'. A specific example of the latter breach was Te Puni Kōkiri's failure to carry out its statutory duty to monitor the health sector by conducting agency reviews, as required by section 5 of the Ministry of Māori Development Act 1991.[75]

Finally, the Tribunal's urgent inquiry into Oranga Tamariki – prompted by the significant disparity between the number of tamariki Māori and non-Māori taken into State care – considered the extent of the State's reach. The Tribunal agreed in part with the Crown's submission that it was consistent with Treaty principles and good governance for the State to 'provide a safety net for the most vulnerable tamariki who need care and protection'.[76] But while acknowledging the State indeed had a part to play, the Tribunal questioned whether 'the Crown is best placed to actually provide that safety net, or whether its role is to ensure the provision of such a safety net'.[77] Calling for 'truly transformational change towards a Treaty-consistent care and protection system', the Tribunal said Māori must lead

71. Waitangi Tribunal, *The Hauraki Settlement Overlapping Claims Inquiry Report* (Lower Hutt: Legislation Direct, 2020), pp 31–32.

72. Waitangi Tribunal, *The Hauraki Settlement Overlapping Claims Inquiry Report* (Lower Hutt: Legislation Direct, 2020), p 118.

73. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p 34. Here, the Tribunal was quoting from Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 428.

74. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p 34. Here, the Tribunal was quoting from Waitangi Tribunal, *Te Mana Whatu Ahuru: The Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2018), pt 1, p 189.

75. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p 138.

76. Waitangi Tribunal, *He Pāharakeke, he Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry* (Lower Hutt: Legislation Direct, 2021), p 178.

77. Waitangi Tribunal, *He Pāharakeke, he Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry* (Lower Hutt: Legislation Direct, 2021), p 186.

and direct the transformation: 'While the Crown has a significant ongoing role, this is not something that it can or should lead'. Instead, good government might involve the Crown standing back and empowering Māori 'to have a direct say in how such a safety net can be designed and provided for their tamariki'.[78]

3.2.2.8 *The principle of redress*

The principle of redress derives from the principles of partnership and active protection. Redress is required when the Crown fails to protect Māori and their interests, including their rangatiratanga.

Previously, the Tribunal has mainly considered the principle of redress in relation to historical claims and tangible taonga such as the foreshore and seabed, petroleum, and rivers.[79] Its applicability in those contexts is well-established. While the principle has seldom been referred to in kaupapa inquiries or in connection with social services, the Tribunal's *Napier Hospital* report noted:

> The notion of particular groups of citizens being accorded the right to pursue claims for redress against the State in respect of State-supplied services is an accepted norm of modern democratic society. Examples in the field of health might be groups put at risk of harm by some State action or omission, such as military personnel exposed to radiation in nuclear tests, haemophiliacs supplied with infected blood, or women at risk of cervical cancer as a result of systemic failure in a screening programme. Whether or not the entitled group is ethnically defined does not affect the principle of entitlement.[80]

In effect, while all citizens have the right to pursue redress against the State, Māori are also entitled to redress derived from the treaty. This argument is relevant when the Tribunal is addressing prejudice relating to social services, and how it may be remedied. Remedies for the kinds of health-related harms described in the *Napier Hospital* and *Hauora* reports – and analogous harms in other areas where the Crown supplies services, such as housing – may relate both to the provision of a service and the physical infrastructure through which the service is delivered. In these situations, it may be appropriate for the Tribunal to make recommendations for remedies that touch on both aspects.[81]

78. Waitangi Tribunal, *He Pāharakeke, he Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry* (Lower Hutt: Legislation Direct, 2021), pp 180, 181.

79. See Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004); Waitangi Tribunal, *The Petroleum Report* (Wellington: Legislation Direct, 2003); Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999).

80. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 40.

81. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 43.

3.3 What the Parties Submitted on Treaty Principles

3.3.1 The principle of partnership and the duty of consultation

Claimant counsel submitted that *Hauora*'s findings about the exercise of treaty partnership in the health sector could be extended to the issue of Māori homelessness. They argued that Māori housing service providers, like their counterparts working in health, are seeking to provide culturally responsive services despite barriers they believe the Crown is responsible for. In order to appropriately partner with Māori, counsel submitted that the Crown must work through the structures Māori prefer, whether iwi, hapū, whānau, or some other designated body or organisation. At present, claimant counsel argued, the Crown is not effectively partnering with Māori to address Māori homelessness. They say the Crown's approach has been limited and fails to reflect contemporary understandings of partnership that require the Crown 'to be versatile and receptive' to a range of Māori needs, and to go beyond 'mere consultation'.[82]

According to some claimants, '[t]rue partnership' requires the Crown and Māori to jointly develop and implement policy and legislation.[83] For others, housing is a taonga of such significance to Māori that the Crown's response to homelessness should go beyond simply enabling co-design. They say that given the status of this taonga, genuine treaty partnership necessitates the creation of a Māori housing authority empowered to address Māori homelessness independently of the Crown.[84]

Whether arguing for co-design or something more, claimants submitted that the Crown's role as a treaty partner is *not* to independently develop policy or legislation and then seek Māori input. If the Crown invites Māori to contribute only at a stage in the process when their contribution would mean very little, then the Crown is essentially seeking Māori agreement as opposed to meaningful Māori involvement. Such actions would not align with the principle of partnership, they said.[85]

In its closing submissions, the Crown accepted it has a partnership duty to engage with Māori in the development of housing policy and services. It acknowledged that its partnership with Māori to improve housing outcomes could be strengthened, especially in relation to 'models that improve the experiences of individuals and whānau when they seek Crown support'.[86] The Crown submitted that engaging with Māori to develop housing policy and services was problematised by the pace at which housing needed to be delivered, but acknowledged that this was not an excuse. It was genuinely attempting to 'find a balance' that worked

82. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 10.
83. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 10.
84. Submission 3.3.44 (Francis McLaughlin), pp [16]–[17], [32]–[33].
85. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 10.
86. Submission 3.3.65 (Crown closing submissions), pp 60–61.

for both parties – a balance between engaging with Māori and 'working at pace' – and invited suggestions from us as to how this balance could be achieved.[87]

3.3.2 The principle of active protection

Claimant counsel submitted that the Crown's attempts to address Māori homelessness have been inadequate and have failed to meet its treaty obligations.[88] They suggested that the active protection threshold might be met if the Crown took a Māori-centred approach that empowered and protected Māori leaders and housing service providers to carry out their work. Active protection, in their submission, would also involve the Crown providing additional resources to address the causes of the housing inequities Māori experience. In essence, claimant counsel considered that the Crown would be fulfilling the principle of active protective where it supported Māori providers to exercise their mana and rangatiratanga in housing their people, including those who are homeless.[89]

The Crown asserted that it was taking 'active steps' to fulfil its treaty obligations and is 'strongly committed to addressing the disparities that exist for Māori in relation to homelessness/housing'.[90] Responding to the Tribunal's finding in *He Pāharakeke* that active protection required 'substantive changes designed to address . . . structural conditions', the Crown acknowledged it had a key role in such change.[91]

3.3.3 The principle of equity

The claimants asserted that the principle of equity requires that Māori be afforded at least equal rights with non-Māori. In housing, however, the inequity between Māori and non-Māori was clear. Māori were over-represented in negative demographics, disproportionately affected by homelessness, disproportionately represented on the social housing register, and constituted a large proportion of those people in social, community, emergency, and transitional housing.[92] Claimants argued that, despite the Crown acknowledging that disparities in housing outcomes were unacceptable, it had still failed to accept its obligation to remedy those inequities and ensure equitable housing outcomes for Māori. Of the Crown's responses to the problem thus far, counsel submitted:

> achieving equitable outcomes does not simply mean reducing the number of Māori who are homeless, or simply providing additional resources to housing support.
>
> . . . . .

87. Submission 3.3.65 (Crown closing submissions), p 52.
88. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 8.
89. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 11–12.
90. Submission 3.3.65 (Crown closing submissions), p 18.
91. Submission 3.3.65 (Crown closing submissions), pp 16–17.
92. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 12–13.

> Homelessness is systemic, and requires the Crown to reallocate resources to enable Māori to support Māori.[93]

Claimants also argued that the Crown's inability to accurately track progress towards housing outcomes, and the inconsistent and uncoordinated nature of the data available, inhibited the Crown's ability to treat Māori equitably.[94]

For its part, the Crown accepted that it should ensure Māori and non-Māori can access the same standard of housing services, but noted no individual can be guaranteed that beneficial outcomes will result. Despite this assertion, the Crown acknowledged that where disparities exist at a population or group level, it should work to address and remove those disparities – particularly where they relate to Māori.[95]

3.3.4 The principle of equal treatment

Generic claimant submissions did not explicitly distinguish 'equal treatment' (the Crown's comparative treatment of different Māori groups) from 'equity'. However, some individual claimants alluded to it when they argued the Crown's response to homelessness had particularly failed some groups of Māori – for example, small rural communities in Northland which were said to have 'slipped under the Government's radar'.[96]

Other groups of Māori that had been treated unequally and unfairly by the Crown's response to the homelessness crisis were also identified. Counsel for the claim brought on behalf of the Mongrel Mob said that, while all Māori were 'amongst the most discriminated and severely deprived' New Zealand citizens, Māori gang members were multiply marginalised – discriminated against by the State, and rejected by their own hapū and iwi because of their gang affiliations. These claimants supported a 'by Māori for Māori' response to issues such as health disparities and homelessness, but said it would only succeed 'if the significant number of Māori that make up the Māori population who are gang members have a place at the decision-making table'.[97] When it came to homelessness, they had been excluded from the table because their organisation – like urban Māori authorities and other groups – did not meet the Crown's preferred partnership model, which was iwi- and hapū-based. Thus, neither the Crown nor iwi and hapū 'are recognising or including them in the kōrero tahi when strategising to address the homelessness . . . [they] face'.[98] This breached multiple treaty principles, the claimants argued.

93. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 14.
94. Submission 3.3.33 (claimant generic closing submissions on data collection), pp 22–23.
95. Submission 3.3.65 (Crown closing submissions), p 10.
96. Submission 3.3.39 (claimant joint specific closing submissions), p 11.
97. Submission 3.3.44 (Francis McLaughlin), paras 8–9, 12.
98. Submission 3.3.44 (Francis McLaughlin), para 42.

Other groups identified by claimants as having been treated particularly unfairly included rangatahi and former prisoners; the parties' arguments in respect of these groups, like those concerning gang members, are addressed in the next chapter.

The Crown acknowledged its Treaty obligations to ensure 'Māori have the same access to [the housing services it provides], and the same standard of service, as other citizens in like circumstances' and to achieve 'a general equality of outcomes between Māori and non-Māori' (this acknowledgement is discussed further in section 3.3.6).[99] Although the Crown's closing submissions did not specifically address its obligation to treat Māori groups equally, they did highlight some initiatives targeted at specific groups of Māori – including rangatahi and those leaving prison.[100]

3.3.5 The principle of options

Many claimants referred to previous Tribunal findings that the treaty relationship requires Māori to have options as to how they choose to live – options that are free, unconstrained, and practically achievable. In the context of housing, this required the Crown to meaningfully engage with current service providers who were seeking to build and restore whānau strength. It should then work alongside them to facilitate the development and implementation of kaupapa Māori models targeting housing and homelessness. By doing so, the claimants argued, the Crown would be ensuring that Māori had access to practical options that actually targeted or supported their housing needs.[101]

In its closing submissions, the Crown agreed with Tribunal findings from *Hauora* that the principle of options 'follows on from the principles of partnership, active protection, and equity and protects Māori in their right to continue their way of life according to their indigenous traditions and worldview while participating in British society and culture, as they wish.'[102]

3.3.6 The principle of good government

Should the Crown fail to discharge duties to Māori that are set out in its own legislation, policies, and strategies, this can be characterised as a breach of the principle of good government. In generic closing submissions, counsel quoted Ricky Houghton's evidence about a lack of Crown 'follow through' in housing and homelessness, which spoke to this shortcoming:

> My general view is that the Crown's current and proposed Māori housing legislation and national Māori housing strategies appear, at face value, to be reasonable

99. Submission 3.3.65 (Crown closing submissions), p 26.
100. Submission 3.3.65 (Crown closing submissions), pp 81–84.
101. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 15.
102. Submission 3.3.65 (Crown closing submissions), p 11, quoting Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p 35.

> and well thought through. But, at the end of day, the government's financial distribution and methodology for implementing them is a whole other story. It looks good in theory, but in practice it is not implemented in a way that helpfully addresses Māori housing needs in terms of the homelessness and housing deprivation issues.[103]

Other such gaps between high-level Crown undertakings (such as those set out in MAIHI and *He Whare Āhuru*) and on-the-ground implementation were also identified. For example, claimants noted assertions by Crown officials and Ministers that MAIHI took a whole-of-government, 'system approach' to homelessness and fostered kaupapa Māori approaches. In reality, claimants argued, connectivity and communication between the agencies was 'non-existent'. The agencies' lack of cultural capability meant they could not ensure services were delivered 'within a kaupapa Māori framework' or truly understand the Crown's treaty duties to Māori.[104] Witness Scott Figenshow, of Community Housing Aotearoa, spoke of 'robust' central government attempts to develop plans, policies, and legislation[105] that would improve Māori homelessness, but which ultimately failed to deliver and became disconnected from their original objectives. He also commented on the 'constant shifting' of institutional responsibilities for housing within Government, saying it destabilised successful policy implementation: 'The appearance of doing something – the something being the everchanging institutional arrangements – is not a substitute for actual affordable housing delivery'. Moreover, the consequences 'are borne by Māori, in extreme levels of housing stress, and poverty'.[106]

Before hearings began, the Crown stated that it had no general treaty or legal duty to provide housing or housing assistance, a position it maintained throughout the inquiry. As noted in section 3.3.4, it acknowledged that article 3 required it to provide Māori with 'the same access to housing services where housing services are provided to the population generally'. While it had sometimes 'assumed the role of providing such assistance as part of its wider governance responsibilities, this does not imply there is a duty to do so'.[107] Notwithstanding, it highlighted various initiatives that it said were addressing claimant concerns about a lack of effective policy implementation, cross-agency coordination, and other matters that could be considered to fall under the umbrella of 'good government'.[108]

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103. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 131; doc B89 (Ricky Houghton), p 9.

104. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 132–133.

105. Such as the Public and Community Housing Management (Community Housing Provider) Regulations 2014 and changes to the Housing Restructuring and Tenancy Matters Act 1992 (from 1 October 2019, renamed the Public and Community Housing Management Act 1992).

106. Document B17 (Scott Figenshow), p 4.

107. Submission 3.1.99, p 8.

108. Submission 3.1.99, pp 7, 9–10.

3.3.7 The principle of redress

Few claimant closing submissions directly referenced the principle of redress – though of course, many groups made future-focused proposals for how prejudice could be alleviated or removed. In contrast, the Crown's closing submissions explicitly acknowledged that '[p]ast wrongs give rise to a right of redress', although it did not detail the form this might take. Referring to the findings and conclusions of previous Tribunal reports, the Crown said it would respond to issues raised in this inquiry with '[g]enerosity of spirit', and would seek to achieve reconciliation.[109]

However, claimants representing Te Whānau o Waipareira Trust and the National Urban Māori Authority told us that the Crown's view of its treaty duties was 'grounded in the past', and its articulation of the principle of redress (among others) was problematic. The claimants said that the jurisprudence on redress has shifted its focus from reconciliation to restoring the mana of Māori and the honour of the Crown.[110]

3.4 The Principles and Duties we will Apply in this Inquiry

Having considered the previous jurisprudence relating to the issues and claims in this inquiry, and also the parties' arguments about applicable treaty principles, we consider the following principles and duties are most relevant to the homelessness stage of this inquiry. We will apply them to our analysis of claims and issues in chapter 4; likewise, they will inform our findings and any recommendations.

3.4.1 Partnership and consultation

The Tribunal's jurisprudence on how the principle of partnership can be realised in the social service context – whether through the co-design and delivery of policy and services, or the establishment of a fully independent Māori authority funded and supported by the Crown – has clear relevance in the present inquiry. The severity and longevity of the homelessness crisis, and its disproportionate impact on Māori, has obvious parallels with the state of the health system highlighted in *Hauora*. Here too, we must examine the extent to which the Crown's homelessness policies, strategies, and responses express a genuine treaty partnership and are founded in meaningful and robust consultation.

3.4.2 Active protection

We accept as a given that the Crown has a positive obligation to protect the tino rangatiratanga of Māori communities over their taonga, and to support them to exercise it through their preferred structures and systems. We also endorse earlier Tribunal findings that, where Māori are suffering adverse social outcomes disproportionately to non-Māori, active protection 'to the fullest extent reasonably practicable' means the Crown must tackle the root causes of the problem, not just

109. Submission 3.3.65 (Crown closing submissions), p 9.
110. Submission 3.3.77 (Te Whānau o Waipareira Trust and the National Urban Māori Authority), pp 2–3.

its manifestations. As *He Pāharakeke* put it, it is *active* protection that is required of the Crown, not passive or reactive protection, and this requires 'substantive changes designed to address these structural conditions'.[111]

3.4.3 Equity and equal treatment

It is undisputed among the parties that disparities in housing outcomes exist in Aotearoa New Zealand, and that Māori are disproportionately affected. The Crown accepts that, where such disparities exist, it must work to remove them in the interests of achieving 'a general equality of outcomes'.[112]

However, the Crown submitted that 'beneficial outcomes from the provision of housing services cannot be guaranteed for any individual'.[113] The Tribunal has acknowledged this point in several previous reports, and we do so again here: while the Crown's provision of housing services (particularly those targeting Māori homelessness) is critical in addressing the disparity of outcomes between Māori and non-Māori, other underlying factors also contribute to that disparity. Some are within the Crown's power to remedy, and some are not. But acknowledging this does not lessen the Crown's responsibility to honour the principle of equity. In fact, as *Hauora* noted, it serves to heighten the Crown's obligation 'to make every reasonable effort to eliminate barriers to services that may contribute to inequitable . . . outcomes'.[114] The Tribunal concluded in the Te Urewera inquiry that the causes of the socio-economic disparities affecting Māori are not material to the Crown's duty to address them; in our view, this is as true of disparities in housing as it is of those in educational achievement, health outcomes, or employment.[115]

The claimants' allegations that legislation, policy, and strategies intended to address Māori homelessness have affected certain groups of Māori unequally – rural communities in Te Tai Tokerau or gang members, for example – require us to examine the Crown's actions in light of the principle of equal treatment as well as equity. Of particular concern are the possible effects of those actions on relationships between Māori iwi, hapū, whānau, and service providers. We are reminded of the language of 'winners and losers' the Tribunal used in the *Tamaki Makaurau Settlement Process Report*. In our view, the Crown's actions in respect of Māori homelessness – like its approach to settlement negotiations – should never leave already vulnerable Māori (and the communities and groups trying to support them) feeling 'like losers' because of where or how they live.

3.4.4 Options

It is well established that, under the treaty, Māori have options for how they choose to live and that the Crown must protect their right to exercise those options. But

111. Waitangi Tribunal, *He Pāharakeke, he Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry* (Lower Hutt: Legislation Direct, 2021), p 20.
112. Submission 3.3.65 (Crown closing submissions), p 10.
113. Submission 3.3.65 (Crown closing submissions), p 14.
114. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), pp 34–35.
115. Waitangi Tribunal, *Te Urewera*, 8 vols (Lower Hutt: Legislation Direct, 2015), vol 8, p 3773.

the Crown's obligations go further, as *Hauora* identified. It found that the Crown should not only ensure Māori have viable choices between 'mainstream' and 'kaupapa Māori' healthcare services and providers but also properly resource the latter so that Māori are not disadvantaged by their choice. It follows that the Crown should also ensure a range of services is available to Māori affected by homelessness, and should fund and support those services so Māori can make genuine choices between them when seeking assistance.

3.4.5 Good government

Clearly, the Government must abide by its own laws and not act outside them; that is inherent in the citizenship rights guaranteed to Māori under article 3 and a pre-condition of a genuine, good-faith treaty partnership. We also consider that good government requires the Crown to ensure its laws, policies, and strategies are actually fully implemented in practice. As *Hauora* put it, this requires the Crown to be accountable for its actions in relation to Māori and willing for those actions to be independently scrutinised. In our present inquiry, we need to examine the Crown's commitment to 'good government' in light of claims of a pronounced gap between the intentions articulated in various statutory provisions, policies, and strategies to alleviate Māori homelessness, and the results they have delivered on the ground.

3.4.6 Redress

In any situation where the Tribunal finds Māori have been prejudiced by actions or inactions of the Crown, they are entitled to redress under the treaty. This includes prejudice arising from the Crown's provision of (or failure to provide) treaty-compliant social services; housing is an obvious example.

It is clear to us that the issues of homelessness and housing are entwined with the concepts of partnership and mutual well-being that lie at the heart of the treaty relationship. If Crown actions, errors, or omissions in breach of the treaty have damaged that relationship and caused prejudice, then targeted, considered, and prompt redress is essential to its restoration.

CHAPTER 4

NGĀ KAUPAPA – NGĀ TĀPAETANGA, TE WEWETE ME NGĀ WHAKATAUNGA / THE KEY ISSUES – ARGUMENTS, ANALYSIS, AND FINDINGS

4.1 Introduction

In this chapter, we address – and where appropriate, make findings on – the key issues arising from the claims before us. As indicated in chapter 1 (see section 1.2.5), these are grounded in the statement of issues agreed by parties before the start of this inquiry stage. For the purposes of this report, we have grouped the issues into four categories:

- Foundational issues: the fundamental premises upon which this stage of the inquiry has proceeded (its scope, definitions of homelessness), and the Crown's housing duties (its obligations under the Treaty of Waitangi and under international law). See section 4.2.
- The Crown's response to homelessness (its data collection responsibilities, its attentiveness to the homelessness situation from 2009 to 2016, and its policies and strategies up until the end of 2021), and issues of Crown capability and performance – including its approach to consultation and co-design, its embrace of tikanga and mātauranga Māori, inter-agency coordination, and the roles and performance of key agencies working in the housing sphere. See section 4.3.
- Homelessness issues affecting specific groups (rural homelessness and the use of whenua Māori, rangatahi homelessness, and the challenges facing released prisoners and gang whānau). See section 4.4.
- Claimants' proposed solution: a Māori housing authority. See section 4.5.

Within each category, we address the key issues in turn – first, by summarising the arguments advanced by the parties, and then by analysing those arguments in light of the evidence presented and the treaty principles we consider most applicable. We conclude our analysis of each issue with, as appropriate, our conclusions, findings of treaty breach, recommendations and/or suggestions for the future.

4.2 Foundational Issues for this Stage of the Inquiry

4.2.1 The scope and focus of the inquiry

4.2.1.1 *What the parties said*

As we set out in chapter 1, the claimants were initially divided about the merits of beginning the inquiry with a focus on homelessness. Some, as noted, argued that homelessness could not be separated from the housing system overall, as it merely

represented the worst failures of that system. In their view, understanding and addressing homelessness required an examination of all its causes and drivers. The majority of claimants, however, said that the current state of homelessness was a matter of urgency that needed support and policy change. We agreed to the majority's request for an expedited stage one inquiry into homelessness – which would necessarily proceed without commissioned research. As such, a wide-ranging approach to homelessness was manifestly impractical. We therefore formulated a statement of issues that was more narrowly focused on Crown policy responses to homelessness over the period from 2009 to 2020.

The claimants found it understandably difficult, nonetheless, to avoid referring to the broader context in evidence and submissions. In generic claimant closing submissions on strategy and policy, for example, counsel raised several matters that they accepted were not the focus of stage one. One was historical Māori land loss, which counsel acknowledged was 'likely to be further explored in stage two of this Inquiry'. However, counsel wished to emphasise that there was 'a whakapapa to the homelessness of Māori and it begins with the loss of whenua, central to Māori wellbeing and identity'.[1] Other matters that counsel raised in generic closing submissions which are principally to be addressed after stage one included the operation of the Resource Management Act 1991 and the barriers to Māori returning to live on their whenua tupu (ancestral land).[2]

Some individual claimants also emphasised the problematic compartmentalisation of homelessness as a stand-alone issue in the inquiry. Claimant John Tamihere observed that 'homelessness is a symptom of a broader problem. To address homelessness, you need to address the whānau in its entirety'.[3] Another claimant, Pairama Tahere, echoed this with his remark that 'Homelessness is the focus for stage one of the housing inquiry, but it is just a symptom of a much greater problem'.[4] Co-claimant Ipu Tito-Absolum also thought it 'inconceivable to raise . . . the issue of homelessness . . . in isolation . . . [W]e need to bring all the issues to the table not just homelessness'.[5]

Other claimants argued that the problems of discussing homelessness in isolation also applied to Crown policies, saying compartmentalisation was a fundamental failing in the Crown's approach to homelessness. These claimants argued that its policies did not address the underlying structural drivers of homelessness, and failed to 'appropriately or adequately' consider the perspectives of Māori who have lived experiences of homelessness when it developed policy. In the view of claimant counsel:

1. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 68–69.
2. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 104, 109.
3. Document B9 (John Tamihere), p 1.
4. Document B28 (Pairama Tahere), p 2.
5. Transcript 4.1.5, p 340.

> The Tribunal will be well aware that homelessness does not occur in a vacuum. It is the result of the interaction of a myriad of complex personal and societal issues, ranging from financial, personal, cultural, social, emotional and psychological circumstances. People on the brink of, or experiencing, homelessness need wide-ranging and wraparound support, rather than a complex bureaucracy.[6]

Kara George also observed that 'it is not possible to "solve" the problem if you just focus on homelessness in isolation without also putting money into finding solutions for the problems of housing supply, especially in the rural areas'.[7] Similar concerns were raised by counsel for Vanessa Kururangi who criticised the Crown for failing to engage with some of the 'major underlying causes of Maori homelessness', such as wealth inequality in the housing market.[8] Dr Shiloh Groot remarked that homelessness was a much bigger issue to resolve than housing:

> It's the sharp edge of growing inequalities and poverty, it's intimately interwoven with experiences of being on the margins of society and disconnected from the community supports that many of us take for granted. It's about economic hardship and all the personal and social issues that come with that.[9]

And counsel for Elisabeth Crawford and Jeff Tukua noted the structural drivers of homelessness, submitting:

> If homelessness is driven by structural drivers and system failures, such as poverty, a lack of affordable housing and limited supply, discrimination, welfare support issues, a lack of employment opportunities as well as mental health and addiction, then it is submitted that these structural drivers must also be addressed.[10]

Overall, at our hearings, claimants made it clear that they sought Tribunal findings and recommendations addressing the need for the Crown to act urgently to improve support for the homeless. However, Tribunal recommendations addressing the broader drivers of homelessness would also be welcome now, they emphasised, notwithstanding the findings of future stages of the housing inquiry. Mr Tamihere, for example, thought that the rise in homeless numbers made homelessness 'a very worthy choice of an issue [to] focus remedies on', but considered that 'solving' the problem would require 'a range of recommendations'.[11] His counsel reiterated this position in closing, explaining that, while his clients had initially thought that homelessness might be an 'unsuitable' focus for a priority

6. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 48–49.
7. Transcript 4.1.5, p 710.
8. Submission 3.3.82 (Vanessa Kururangi submissions in reply), pp 6–7.
9. Transcript 4.1.6, p 38.
10. Submission 3.3.80 (Elisabeth Crawford and Jeff Tukua), p 9.
11. Transcript 4.1.5, p 274.

hearing (given the breadth of contributing factors), they now welcomed recommendations for remedies.[12]

Witnesses appearing for the Crown also recognised the difficulty of focusing on homelessness in isolation. The chief executive of the Ministry of Housing and Urban Development, Andrew Crisp, described homelessness as 'the sharp edge, the presenting issue' of the housing crisis, and acknowledged that it was 'not easy to know where to draw the line' with regard to the 'broader system issues'.[13] Likewise, the chief executive of Kāinga Ora, Andrew McKenzie, explained that his evidence had covered matters other than homelessness because 'it is a very complex area and everything is interrelated'.[14] Crown counsel, in her cross-examination of claimant witness Lynley Deane, remarked that it was '[v]ery difficult [in] a prioritised stage of this inquiry into homelessness' to avoid matters that were earmarked for inquiry later, such as papakāinga housing. As she put it, 'so many other things come in, but we're just having to deal with them in later parts of the inquiry'.[15]

The Crown, like the claimants, was unwilling to limit the scope of our recommendations. In closing submissions, the Crown referred to the claimants' concern that it was ignoring 'the structural drivers' of homelessness, and instead treating 'institutional system change . . . as a substitute for tangible action'. This was not in fact the case, the Crown submitted. Crown counsel told us that 'Work across the wider Crown that responds to the ongoing impacts of colonisation, the structural drivers of homelessness, are being advanced in a work programme that seeks to improve wellbeing and inequity.' Moreover, the Crown would welcome Tribunal recommendations on matters such as 'the structural drivers'.[16] In closing submissions, counsel reminded us of the Crown's earlier acknowledgement that it would gladly receive recommendations from the Tribunal to improve 'Māori housing overall'.[17] For his part, Mr Crisp said that 'I particularly welcome any recommendations and views on the system'.[18] Later, under questioning from the Tribunal, he explained that 'recommendations which are specific and targeted to the homelessness end of the spectrum . . . would be helpful'. At the same time, however, he sensed there was 'risk' in the Crown having insufficient 'acknowledgement or focus on the broader issues'.[19]

The Crown submitted that it recognised it needed to 'attack [these] complex issues on all fronts simultaneously – structural drivers, system change (including institutional change) and urgent action'.[20] Counsel told us that the Crown 'understands that homelessness is driven by structural drivers and system failures, such

12. Transcript 4.1.8, pp 278–279.
13. Transcript 4.1.7, pp 226–227.
14. Transcript 4.1.7, p 445.
15. Transcript 4.1.5, pp 411–412.
16. Submission 3.3.65 (Crown closing submissions), pp 35–37.
17. Submission 3.3.65 (Crown closing submissions), p 29.
18. Transcript 4.1.7, p 26.
19. Transcript 4.1.7, pp 227–228.
20. Submission 3.3.65 (Crown closing submissions), p 36.

as poverty, a lack of affordable housing and limited supply, discrimination, welfare support issues, and a lack of employment opportunities'.[21] Counsel quoted evidence from Ministry of Housing and Urban Development witness Jeremy Steele, who said that homelessness was

> a multi-layered issue with many structural drivers and wider government work is critical in reducing homelessness. This includes work to substantially increase housing supply, address poverty and improve the ability of individuals, family and whānau to afford rents in the private market and a range of other work.[22]

In response to Crown closing submissions, claimant counsel questioned the Crown's commitment to addressing the structural drivers of homelessness, as it had asserted in submissions (along with its willingness to receive recommendations on such matters). Commenting specifically on the Homelessness Action Plan, counsel submitted:

> Regardless of what the Crown may say, the HAP perpetuates the Crown's preoccupation with housing initiatives as the solution to homelessness, and ignores how Māori came to be over-represented in homeless populations. Counsel submit that this is because socioeconomic issues and structural drivers were not identified early by the Crown as primary causes of homelessness, and therefore have been neglected.[23]

Thus, any strategies to address the structural drivers of homelessness would only succeed 'if Māori are involved throughout the process'.[24] Further, counsel argued that '[t]he Crown must consult and partner with Māori for appropriate initiatives that are well-funded and adequately resourced to ensure a high probability of success'.[25]

With respect to the role of local government (which we will return to later in the inquiry), the Crown did submit that it would 'be important for the Tribunal, in considering any recommendations it makes, to have due regard to the review/reform work already underway' concerning 'local government's role in communities'.[26] Crown counsel also noted that some issues in this inquiry overlapped with other Tribunal kaupapa inquiries, and thus asked that 'any recommendations to further improve the housing outcomes for Māori need to consider the whole gamut of social services and wellbeing policy. Housing and homelessness policy has to be considered against other social and economic factors.'[27]

21. Submission 3.3.65 (Crown closing submissions), p 35.
22. Transcript 4.1.7, p 48 (submission 3.3.65 (Crown closing submissions), p 36).
23. Submission 3.3.86 (claimant joint closing submissions in reply for Wai 2699 and others), p [14].
24. Submission 3.3.86 (claimant joint closing submissions in reply for Wai 2699 and others), p [14].
25. Submission 3.3.86 (claimant joint closing submissions in reply for Wai 2699 and others), p [14].
26. Submission 3.3.65 (Crown closing submissions), p 97.
27. Submission 3.3.65 (Crown closing submissions), p 99.

In reply submissions, some claimants took issue with these Crown caveats about the inquiry's scope. Counsel for Elisabeth Crawford and Jeff Tukua, for example, submitted:

> Although the Claimants also welcome the role of local government in the housing system being explored more fully in future stages of the Inquiry, it is submitted that the local government issues raised during Stage One by a number of claimants must be addressed in this Stage of the Inquiry.[28]

Counsel for Ngāti Hine and Te Kapotai questioned the Crown's reference to 'the whole gamut of social services and wellbeing policy'; did this mean the Crown expected the Tribunal to hold off making any recommendations until all kaupapa inquiries had been held? The claimants rejected 'any such suggestion', and 'welcome[d] the findings of this Tribunal as soon as possible'.[29]

4.2.1.2 *Tribunal analysis*

The overwhelming majority of claimants requested a stage one inquiry into Māori homelessness. Their rationale for this approach was that increasing numbers of whānau were being 'forced to sleep in cars, on streets, or in already congested homes with extended family', and any delay 'would have the effect of further prolonging inquiry into what is already a dire need'.[30] It is clear that these submissions stemmed from a deep sense of anxiety among ground-level observers, and when the Crown supported the claimants' request, we agreed to proceed with a prioritised inquiry. We were conscious at the time, though, that it would be difficult to isolate issues of homelessness from the broader range of matters we must consider in the course of our inquiry into housing policy and services. However, we agreed to claimant demands given the exigencies of the time (and also because most claimants considered enough technical evidence and research was already available for a targeted stage one inquiry to proceed; see section 1.2.2). It was with this in mind that we restricted the focus of the inquiry to Crown policies and strategies to address homelessness since 2009.

Many claimants clearly found the constraints of such an approach impractical, even illogical. As we have seen, some argued that the separation of homelessness from broader issues such as the lasting impact of colonisation or the systemic drivers of poverty made no sense. In certain respects, therefore, what some hoped for from our stage one inquiry is what the overall inquiry has been designed to deliver: a comprehensive examination of the contributors to Māori disadvantage in the housing system, past and present. After all, homelessness seems undeniably the most acute and visible disadvantage.

28. Submission 3.3.80 (Elisabeth Crawford and Jeff Tukua submissions in reply), p 3.
29. Submission 3.3.81 (claimant joint submissions in reply for Wai 1464 and others), p 11.
30. Submission 3.1.172, pp 2, 5.

That, however, is not how our inquiry has been structured. When Tribunal staff analysed issues raised in statements of claim in 2019, they identified several themes.[31] In 2020, staff identification of research gaps across these themes led to five research reports being commissioned. These cover housing on Māori land from 1870 to the present, Māori housing from 1935 to 1990, and three separate matters spanning the period from 1991 to the present: Māori in the rental housing market, Māori home ownership, and Māori and social housing and special housing.[32] We have no doubt that these reports will build a picture of the complex array of factors that contribute to Māori homelessness. But we have not yet received and heard that evidence, nor any of the non-commissioned evidence we will undoubtedly hear on broader housing issues. In the circumstances, therefore, we are effectively precluded from drawing any firm conclusions on the relationship of a wide range of factors to homelessness.

What we can say is that we recognise that broader historical and structural issues are the root cause of homelessness, and we acknowledge that we cannot meaningfully contribute to resolving these problems without addressing those issues. Furthermore, we accept that the claimants did point to these broader issues, repeatedly, and that the Crown invited any recommendations on them we saw fit to make. However, we cannot compromise the integrity of the overall inquiry by pre-empting planned later stages. Nor, indeed, would it be sensible for us to make findings or recommendations that were not informed by the best or fullest information. Where we can, and we consider it may be useful to do so, we make some preliminary observations – but, as noted, these will not have the status of formal findings.

In effect, what we are restricted to in this report is a relatively narrow set of issues. By 'narrow', we mean matters that are, explicitly or by implication, covered by the December 2020 statement of issues. These include the 2009 homelessness definition; Crown actions and policies formulated specifically to address homelessness from 2009 to 2021; homelessness data collection; the adequacy of support during this period for specific groups such as rangatahi, gang whānau, and released prisoners; internal Crown capability and responsiveness; and other matters of a relatively specific nature. Broader issues beyond the scope of this priority report include (but are not limited to) the relationship of homelessness to colonisation; poverty and inequality; the Māori land title system; wealth distribution in housing; the taxation system and fiscal policy; the actions of local government; and the resource management regime.

Given their significance, we must not lose sight of the influence of these broader issues on homelessness as the housing inquiry progresses. They are, after all, entrenched and underlying factors that a priority report is not best suited to address. We might add that our difficulty in reporting on them at this point of

31. Memorandum 2.5.10, pp 2–3.
32. Submission 3.2.321(a) (Draft inquiry plan), p [1].

the inquiry – already signalled, of course, by the limited scope of our statement of issues – is the inevitable result of separating out one aspect of an interconnected whole for early reporting. Limits must be placed on the boundaries of the discussion, no matter how unsatisfactory it may feel to do so. Needless to say, such considerations do not apply to the matters that lie clearly within scope, which we turn now to address.

4.2.2 Developing a definition of homelessness: was the Crown's process treaty-compliant?

4.2.2.1 *What the parties said*

The definition of homelessness was a significant focus of the claimants' submissions. Their essential position was that the Crown had failed to consult Māori on the official definition that Statistics New Zealand developed in 2009, namely 'living situations where people with no other options to acquire safe and secure housing are: without shelter, in temporary accommodation, sharing accommodation with a household, or living in uninhabitable housing'.[33]

The majority of claimants argued that, because of the Crown's lack of consultation with Māori, this definition was too narrow and did not adequately reflect Māori experiences and perspectives. Claimant counsel listed several reasons why the Crown was obliged to develop the definition 'through robust and meaningful consultation with Māori' – because Māori are tangata whenua; in order to honour the treaty obligations of partnership and good faith; because past treaty breaches have led to landlessness and the disconnection from papakāinga; and because Māori are the worst affected by homelessness and the most vulnerable to it.[34]

As we have set out in section 1.2.3 of chapter 1, the majority of the claimants formulated their own definition in May 2020, believing that the homelessness inquiry could not be conducted properly without one. This consisted of three parts: a definition, a whakatauakī ('Te Kore Ukaipo'), and an 'active definition':

> **Definition of Homelessness**
>
> From a Māori, cultural, tikanga and indigenous interpretation, homelessness is a complete loss and bereftness of:
>
> - physical connection
> - spiritual connection
> - cultural connection
> - emotional connection
>
> to a fundamental foundation that denies the humanity of a person to his or her:
>
> - sense of belonging
> - culture

33. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 35.
34. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 31.

- innate sense of permanency
- inner tranquillity and calmness
- personal essence
- the oneness within a whanau

Te Kore Ukaipo
Kua kore te pou o tō whare
Kua tū tangatanga
Ko te kapua pōuri
Kua whakairia ki runga i a koe
Ko tō kiri
Ka tokiā e te anu mātao
E tai mai nei

When one no longer has the shelter of a house
One stands loose and detached
A dark cloud hangs above you
And your skin is pierced by the freezing wind,
that envelopes you in never ending waves

The Active Definition
Homelessness is the absence and loss of kainga, ahi ka roa, tino rangatiratanga, the capability and capacity to achieve and sustain an enduring state of whānau ora, tu mana motuhake.

Homelessness is the deprivation of the right to determine, in accordance with one's own Tikanga/cultural norms, what a home should be and looks like for whānau and individuals.

Homelessness impacts on the dignity, respect, integrity, mana and tapu of all those affected, including their mental, emotional, cultural and physical wellbeing, which can result in humiliation and embarrassment

Homelessness includes, but is not limited to:

- Those without shelter, including rough sleepers, those sleeping in cars, and those living in the bush
- Those reliant on or staying temporarily with friends and whānau in informal arrangements, and those in emergency or temporary housing provided by the government, council or social housing providers
- Those using night shelters
- Those living in temporary accommodation such as holiday parks and motels
- Those that 'chose' to vacate houses or homes due to other factors which make that place unsuitable for accommodation, i.e. crowding, relationship breakdown, threat of violence etc.
- Those living in dilapidated and uninhabitable housing
- Those living without access to water, electricity, or other utilities
- . . . [T]hose living rough in tents and temporary dwellings in the bush, and those living in caravans on marae;

- . . . [T]hose living in houses and dwellings, including caravans, without fundamental utilities such as water, sewerage and power;
- . . . [T]hose who return to their kainga/tūrangawaewae but find there are no houses available to rent, and/or face obstacles buying or building a house and are therefore rendered homeless as a result of their desire to move home.[35]

As discussed in chapter 1, we decided to commence the inquiry without arbitrating between the contrasting definitions of homelessness advanced by the parties, preferring instead to focus on Crown strategy to address Māori homelessness.[36] Despite this, the claimants continued (in generic closing submissions) to stress the need for a more 'holistic' definition that was created from a Māori perspective and encapsulated 'not only the living situation of an individual or whānau, but [also] their mental, emotional, cultural, social and spiritual well-being'.[37] Claimant counsel maintained that the official Crown definition was too narrowly focused on 'mere housing situations' rather than on 'the inseparable human and spiritual elements' of homelessness.[38]

Specific claimant closing submissions made similar contentions. Counsel for Te Kapotai and Ngāti Hine argued that any meaningful definition of homelessness 'cannot be divorced from colonisation, land alienation and a history of forced integration'. The application of a narrow definition by 'the bureaucracy', she said, served to keep homelessness hidden.[39] Counsel for Francis McLaughlin submitted that 'any definition of kāinga must be Māori led, kaupapa Māori and any lack thereof to be defined again by Māori'.[40] Counsel for Te Whānau o Waipareira Trust and the National Urban Māori Authority argued that the Crown's definition was 'too narrow and adopts a Eurocentric view of homelessness as an issue that affects the individual, rather than the whānau, and the wider community'.[41]

In sum, then, the claimants considered that the Crown had made two fundamental errors in adopting its definition of homelessness in 2009. First, it had failed to consult with Māori before doing so. Secondly, it had failed to make amends for this initial error in the intervening years, despite burgeoning Māori homelessness. As counsel put it in generic closing submissions:

> By failing to engage and consult with Māori on the homelessness definition or to incorporate a Te Ao Māori view as to what comprises homelessness, or Te Kore

35. Submission 3.1.225(b) (Schedule 2 to joint memorandum of counsel), pp 1–2.
36. Memorandum 2.5.25, p 14.
37. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 34.
38. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 37.
39. Submission 3.3.39 (claimant joint closing submissions for Wai 1464 and others), pp 41–42.
40. Submission 3.3.44 (Francis McLaughlin closing submissions), p 21.
41. Submission 3.3.45 (Te Whānau o Waipareira and the National Urban Māori Authority closing submissions), p 14.

> Ūkaipō, the Crown missed a perfect opportunity to truly exemplify its commitment to the treaty relationship.
>
> . . . . .
>
> The fact that 12 years has passed since the implementation of the Crown definition, and yet Māori homelessness continues to worsen, is telling in counsel's submission.[42]

By way of remedy, most claimants argued that the Crown should at least partner with Māori to identify a new definition. Counsel representing 11 claimants submitted that the Crown should 'establish a consultation process to develop a holistic definition of homelessness for use by the Crown'.[43] Counsel for Hurimoana Dennis and Te Puea Marae likewise submitted that the Crown should develop a 'national Māori homelessness definition' in partnership with Māori, which would then 'sit parallel to and inform the current Statistics NZ definition to guide the delivery of homelessness policy, strategy and practice from a Te Ao Māori lens'.[44] Counsel for Veronica Henare and the Manukau Urban Māori Authority went a step further, calling for the Crown to simply adopt the claimant definition, which would then 'sit above the Crown's homelessness definition'.[45] Jacqueline Paul, a witness for the Te Matapihi claim, stated that 'The Crown should work with Māori to develop a definition for Māori homelessness', including a separate definition for 'youth homelessness'.[46]

The consequences of the Crown's reliance on what they alleged was an inadequate definition of homelessness – one which characterises housing as an essentially physical concept – were highlighted in the claimants' generic closing submissions. Counsel said the definition had unfortunately shaped the Crown's 'overall vision' for addressing homelessness, and had meant its policies and strategies failed to consider 'structural and systemic issues or actively target the socio-economic drivers that cause Māori homelessness'. Counsel drew on technical witness Dr Groot's evidence to state that 'while the provision of physical housing is important and a necessary part of remedying Māori homelessness, making it the primary focus of the definition means that the socio-economic drivers (derived from colonisation) that make and keep Māori homeless, are being ignored or deprioritised.'[47] According to counsel, the broader and more encompassing the definition of homelessness, the broader and more impactful the response. As Dr Groot

42. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 45–46.
43. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 97.
44. Submission 3.3.46 (Hurimoana Dennis and Te Puea Memorial Marae closing submissions), pp 51–52.
45. Submission 3.3.53 (Veronica Henare and the Manukau Urban Māori Authority closing submissions), p 14. It should be noted that, later in the same submission, counsel sought a more equal standing for the claimant definition. As they put it, 'The Claimant definition should sit parallel to the Crown definition and directly inform the Crown definition when addressing Māori homelessness': see p 29.
46. Document C4 (Jacqueline Paul), p 12.
47. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 42–43.

explained under cross-examination, 'without a broad understanding, [the] many intersecting areas that drive homelessness will continue to impact it and we will narrow our responses and our effectiveness as a result'.[48] In particular, Dr Groot's brief of evidence called for a definition that reflected 'the structural pathways' that lead to homelessness; otherwise, measures like the Homelessness Action Plan would always be too narrow in their impact.[49]

For its part, the Crown was generally willing to make concessions regarding the official definition it had adopted. Noting that the definition also served as a means of classifying different sectors of the homeless population, Crown counsel accepted 'that this definition and classification were not sufficiently consulted with iwi, hapū or Māori prior to adoption'. Counsel further accepted the claimant criticism that 'the definition does not reflect the complexity of homelessness, especially for Māori'. As such, counsel acknowledged 'that Māori definitions of homelessness will be reflective of Māori as tangata whenua and respond through a Te Ao Māori lens'.[50]

In terms of remedying the situation, Crown counsel noted that the Ministry of Housing and Urban Development had proposed

> there be a review of the current homelessness definition, such review to actively involve Stats NZ, iwi, hapū, whānau (including people with lived experience of homelessness), Te Matapihi, Māori providers, and researchers. The review project will work to understand whether multiple definitions are needed, or whether multiple measures will address the gaps and concerns raised regarding understanding, monitoring, and holding the Crown to account regarding homelessness for different population groups.
>
> This work on the definition, classification and measurement of homelessness will be undertaken alongside work to understand what a standardised homelessness data platform might look like.
>
> The key to the success of any review of the current homelessness definition will be the partnership relationship and a focus on bridging the gap between policy and delivery.[51]

The Crown did sound one note of caution, however. While many claimants had called for a broader definition, or even for multiple definitions catering for different groups (such as one specifically for rangatahi), Crown counsel noted that researcher Dr Kate Amore had set out the advantages of a standard definition that could be universally applied. As Dr Amore had explained, using different measures would make it difficult to compare disparities across groups, and 'less tangible variables' would also be difficult to measure. She therefore thought there

48. Transcript 4.1.6, p 108.
49. Document C12 (Shiloh Groot), p [4].
50. Submission 3.3.65 (Crown closing submissions), pp 77–78.
51. Submission 3.3.65 (Crown closing submissions), pp 79–80.

was 'definitely utility in being able to at least have one measurement that measures everyone the same way so that things can be compared'.[52]

In reply submissions, counsel for Mr Dennis and others noted that the Crown had stopped short 'of stating that any new homelessness definition will or should include a Te Ao Māori component', which the claimants considered 'vital'. Nor had the Crown given any timeframe for this new definition. Counsel also disputed that Dr Amore's perspective contradicted the claimants' position. Rather, while the claimants agreed that 'the data is relevant and necessary', they considered that other elements were also needed in measuring Māori homelessness.[53]

4.2.2.2 *Tribunal analysis*

There appears to have been little Māori involvement when Statistics New Zealand developed the homelessness definition in 2009. The agency provided information on this point, in response to a written question we asked Mr Crisp after he gave evidence, but it was hard to tell from this how significant the Māori input to the definition was. It seems that Statistics New Zealand used work-arounds to compensate for the low number of Māori submissions on the draft definition, including the 'expertise of Statistics NZ's Māori advisors'.[54] We were not helped in clarifying these matters by the lack of a Crown witness appearing on behalf of Statistics New Zealand. In any event, Statistics New Zealand does not appear to have plugged any gaps by consulting communities experiencing high levels of homelessness after 2009, and when it reviewed the definition in 2015 there seems to have been no opportunity for external input.[55]

As we have seen, the Crown acknowledged in closing that its consultation with Māori when developing the definition was insufficient, but it made no concession of treaty breach. It is certainly regrettable that consultation with Māori (and others, such as Pacific peoples) over the wording of the homelessness definition was not prioritised at the time. Statistics New Zealand would have been well aware of 2006 census data that showed an ongoing decline in Māori rates of home ownership.[56]

As we set out in chapter 3, in the context of Māori experiencing profound and lasting socio-economic disparity, the principle of partnership requires the Crown to commit to genuine treaty partnership. It might be suggested that the Crown was unaware of the scale of Māori homelessness in 2009, since its record-keeping at the time was so limited. It was, however, fully aware of Māori disadvantage in housing statistics, and it would not have taken much imagination for it to consider

52. Transcript 4.1.6, p 260 (submission 3.3.65 (Crown closing submissions), p 79).

53. Submission 3.3.86 (claimant joint closing submissions in reply for Wai 2699 and others), pp [15]–[17].

54. Document D1(f) (Andrew Crisp, responses to questions in writing), pp 15–16.

55. Statistics New Zealand, 'New Zealand Definition of Homelessness: 2015 Update', https://www.stats.govt.nz/assets/Uploads/Retirement-of-archive-website-project-files/Methods/New-Zealand-definition-of-homelessness/nz-definition-homelessness-2015-update.pdf, accessed 7 November 2022.

56. See, for example, Centre for Housing Research Aotearoa New Zealand, *Census 2006 and Housing in New Zealand*, August 2007, p 31, https://thehub.swa.govt.nz/assets/documents/census-2006-housing-in-nz.pdf, accessed 7 November 2022.

that meaningful and targeted consultation with Māori on the definition of homelessness was appropriate. In terms of the sliding scale we discussed in chapter 3, the significant Māori interest in the matter should have been readily apparent. We do not think that Statistics New Zealand consulting its own Māori advisors (for example) in any way made up for this omission. As such, we find that the Crown breached its treaty duty of consultation in the manner in which Statistics New Zealand developed the 2009 definition, and in the way that this original omission was not rectified in the years that followed (including when the definition was reviewed in 2015).

It had been our hope to begin the inquiry with an agreed definition of homelessness, but it was too difficult to achieve consensus between the claimants and the Crown. Regardless, it is clear that the 2009 definition is inadequate – as the Crown itself has acknowledged, it does not reflect the complexity of homelessness for Māori.[57] But nor do we believe that the claimants' proposal for an expanded definition of homelessness – one that refers to, for example, the loss of tino rangatiratanga – is a useful or practical advance. We also note that the claimants' 'active definition' includes descriptions of homelessness that all fall readily under the official definition. There are no descriptions proposed in the claimants' active definition encompassing a loss of connection to whenua or the loss of rangatiratanga per se – and in fact one scenario presented is that of people living in caravans on marae, which could in fact be an exercise of ahi kā roa if those whānau had whakapapa to that whenua.

Both Crown and claimant definitions, therefore, need some work, and our hope is that an acceptable middle ground can be found. The Crown has said it will initiate a process to review the current definition, and that Māori will be to the fore in that endeavour. Since the details of this review are few, and its timeframe is unclear to us, there is little we can say about it. However, the principle that the Crown and Māori should wānanga about the definition and then co-design a solution is one we fully support. We merely note, though, that the Crown's plan does not mention engagement with the claimants specifically, beyond Te Matapihi. We recommend therefore that the Crown and Māori should work together in partnership to co-design a new definition. We also expect this review process to involve the claimants participating in the housing policy and services kaupapa inquiry, as they represent more broadly the Māori interest in the kaupapa.

4.2.3 Does the Crown have a treaty duty with regard to housing?

4.2.3.1 *What the parties said*

In 2018, at an early stage in our inquiry planning, the Crown set out its position on this fundamental question:

> As has been stated by the Crown in other Tribunal inquiries, as with some other social services the Crown does not consider it owes a general Treaty or legal duty to provide housing, or housing assistance. Article three of the Treaty requires the Crown

57. Submission 3.3.65 (Crown closing submissions), p 78.

> to provide Māori with the same access to housing services where housing services are provided to the population generally. While at times the Crown has assumed the role of providing such assistance as part of its wider governance responsibilities, this does not imply there is a duty to do so.[58]

Notwithstanding this position, Crown counsel continued, 'addressing issues relating to the provision of housing and housing services is a key policy priority for the Crown.'[59]

In its opening submissions, the Crown repeated the substance of this argument, adding:

> Where disparities exist at a population or group level, the Crown should aim to target housing services in an attempt to remove those disparities. Achieving a general equality of outcomes between Māori and non-Māori at a group or population level is the objective of work to address and remove disparities.[60]

Many of the parties' arguments about the Crown's duties referred to the Tribunal's recently-released report on the Oranga Tamariki urgent inquiry, *He Pāharakeke, he Rito Whakakīkīnga Whāruarua*. There, the Tribunal found that the guarantee to Māori in te Tiriti of tino rangatiratanga over their 'kāinga' meant 'nothing less than a guarantee of the right to continue to organise and live as Māori'.[61] The Crown itself acknowledged in its opening submissions to us that 'this analysis will be relevant to this particular inquiry. The Crown will develop its thinking and position on this as this inquiry progresses and will address the matter in submissions on relevant aspects of the inquiry.'[62]

After hearing its evidence, we asked the Crown whether the Oranga Tamariki report had prompted any adjustment of its position. Crown counsel responded that the Crown's position 'remains as previously articulated'. She added that the Crown was 'still considering the implications of the OT report', which she suggested went beyond the housing inquiry itself. Moreover, she contended that the Tribunal in the Oranga Tamariki report did not say that the Crown had an obligation 'to "provide" or "create" kāinga', but rather 'emphasised the importance of the Crown not intruding into or interfering with kāinga'.[63]

In generic closing submissions, the claimants described the Crown's interpretation of kāinga as 'simplistic' and one that 'considers kāinga in its narrowest sense, ignoring the thrust of the principles of te Tiriti/the Treaty'. Applying the principle of active protection, for example, requires the Crown to have 'a clear understanding of what the guarantee of tino rangatiratanga over kāinga means, and careful

58. Submission 3.1.99 (Crown response to new and amended statements of claim), p 8.
59. Submission 3.1.99 (Crown response to new and amended statements of claim), p 9.
60. Submission 3.3.32 (Crown opening submissions), p 5.
61. Waitangi Tribunal, *He Pāharakeke, he Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry* (Lower Hutt: Legislation Direct, 2021), pp 12, 96.
62. Submission 3.3.32 (Crown opening submissions), p 7.
63. Memorandum 3.2.174 (Crown), pp 1–2.

consideration of what would now promote its maintenance and restoration'. This would include 'recognising the drivers of homelessness, and the role the legislative, economic and policy decisions have had in perpetuating same'. With respect to the principle of equity, counsel continued, the Crown has a 'heightened duty' to address disparities, especially where those disparities are 'connected to historical treaty breaches'. Counsel concluded that the guarantee of tino rangatiratanga over kāinga required the Crown to ensure that Māori are 'sufficiently empowered' to the point they 'no longer require Crown assistance'. This required the provision of a 'durable foundation' and 'adequate resources for Māori to thrive'.[64]

Various claimant counsel added to this argument in specific closing submissions. Counsel for Te Waimate Taiamai ki Kaikohe Claims Alliance pointed out that very little of 'the kāinga necessary to protect the cultural continuity promised by Te Tiriti' remained in Māori ownership. It had, he submitted, become 'unsustainable' today, 'after 180 years of land takings, urbanisation and assimilation policies' for the Crown 'to say they have no duty to provide housing to Māori. They have a duty to provide much more than housing, but housing is where the Crown must start in meeting its Tiriti duty to protect Māori communities and places where they live.'[65]

The Crown's responsibility for the prejudice caused to kāinga by colonisation, and its responsibility to make good, were central to several other submissions.[66] Counsel for Donna Awatere-Huata and Te Rūnanga o Kirikiriroa Housing (and others, including the Māori Women's Refuge) submitted that restoration of kāinga (in the sense meant in the Oranga Tamariki report) would need to occur on Māori-owned land through engagement with iwi, hapū, and whānau, and 'For Māori that are unable to return to kāinga, there remains an onus on the Government to ensure that current housing conditions meet the definition of kāinga – an abode that imbues cultural; spiritual and social well-being for all its residents.'[67]

Counsel for Mr McLaughlin explained that claimants did not expect the Crown itself to provide kāinga, as the Oranga Tamariki report uses the term, but did expect the Crown to give 'the power to a Māori Housing Authority' to do so.[68]

Counsel for Te Whānau o Waipareira Trust and the National Urban Māori Authority referred to the Crown's suggestion – which relied on a comment by the Tribunal in *He Whiritaunoka*, the Tribunal's Whanganui land report – that there was no general duty to provide Māori with housing. This suggestion was, claimant counsel argued, a 'red herring'and largely a matter of semantics. Quite simply, the

64. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 24–27.
65. Submission 3.3.43 (Waimate Taiamai ki Kaikohe Claims Alliance closing submissions), p 11.
66. Submission 3.3.39 (claimant joint closing submissions for Wai 1464 and others), pp 26–27; submission 3.3.56 (Vanessa Kururangi closing submissions), p 5; submission 3.3.59 (claimant-specific closing submissions for Wai 558 and others), pp 19–20.
67. Submission 3.3.59 (claimant-specific closing submissions for Wai 558 and others), p 18.
68. Submission 3.3.44 (Francis McLaughlin closing submissions), p 15.

Crown was obliged 'to provide housing to those who do not have access to the kāinga'.[69] Regardless, he said,

> If the Tribunal determines the claims to be well founded, it does not appear to make any practical difference whether the Tribunal finds that the Crown owes a general duty to provide housing, or simply finds that the Crown has failed to provide the same access to Māori as the population generally. The prejudice remains the same, as does the solution required to remedy that prejudice.[70]

In closing submissions Crown counsel explained that the Crown's 'initial view' was that housing that formed part of a 'kāinga' (as defined in the Oranga Tamariki report) was a taonga.[71] Indeed, said Crown counsel,

> The concept that a kāinga is more than just a place where a whānau live is a key part of the MAIHI Framework for Action. The Crown understands that for those experiencing homelessness, provision of housing is not simply a bricks and mortar issue, but one that is about whakapapa, whenua and wellbeing.[72]

The Crown accepted that, under article 3,

> it has a duty to provide the same access to housing and housing services to Māori at the same level of quality and that overall the provision of housing and housing assistance to Māori must be at least equal to the provision of housing and housing assistance to non-Māori.[73]

Crown counsel noted that the Crown had set up a cross-agency working group to consider the 'nature and extent of the Crown's Treaty duties in relation to housing'. The group would reflect on the claimants' submissions, including the question of whether housing, as a basic human right, is also a taonga. 'In the meantime', counsel submitted:

> the Crown says it is unnecessary to determine whether housing more generally (than 'kāinga') might be taonga. The Crown's obligations in relation to homelessness issues, and compliance with such obligations, can be assessed with reference to issues such as equality, equity, disparity and (for kāinga) active protection[.][74]

69. Submission 3.3.45 (Te Whānau o Waipareira Trust and the National Urban Māori Authority closing submissions), pp 14–15.
70. Submission 3.3.45 (Te Whānau o Waipareira Trust and the National Urban Māori Authority closing submissions), p 15.
71. Submission 3.3.65 (Crown closing submissions), p 15.
72. Submission 3.3.65 (Crown closing submissions), p 16.
73. Submission 3.3.65 (Crown closing submissions), p 13.
74. Submission 3.3.65 (Crown closing submissions), p 17.

In reply submissions, counsel for Manurewa Marae expressed concern about the Crown's cross-agency group, because 'it is not for the Crown to define or determine whether housing can be properly described as "taonga" or "kāinga"'. The group's conclusions could 'steer the Crown in a particular direction that could cause harm to Māori if te Tiriti meaning and Crown obligations are incorrectly interpreted'. Counsel submitted that it is 'reasonable to treat, prima facie, housing in its everyday context, as a taonga'.[75]

Counsel for Ngāti Hine and Te Kapotai was critical of the Crown having to resort to a review of its treaty responsibilities in regard to housing and homelessness. It had done so despite the housing kaupapa inquiry being active since late 2017 and the Crown's 'own evidence . . . that it has been developing policy to address the urgent need for Māori housing solutions for several years'. As counsel put it, 'The fact that the Crown is still working through its understanding of Treaty duties in terms of housing and homelessness, implies that it is still unclear itself, and further was unclear when past policies have been developed for Māori.' Counsel also addressed the Tribunal's comment in *He Whiritaunoka* about there being no general treaty duty with regard to housing, submitting it was made in 'an historical inquiry, in which housing issues were not addressed in claimant evidence in a significant way nor was housing the primary focus of the Tribunal's inquiry'.[76]

Counsel for Te Waimate Taiamai ki Kaikohe Claims Alliance argued that the Crown was attempting to 'deflect attention from the need for a duty to provide housing or kāinga by pointing to MAIHI'. But MAIHI, submitted counsel, was no substitute for action. Further, the cross-agency working group would also only provide recommendations, and it was not clear when it would report.[77]

4.2.3.2 *Tribunal analysis*

The meaning of 'kāinga' the Tribunal set out in *He Pāharakeke* had a particular appeal to the claimants. It reflected the kōrero of Tribunal member Tā Pou Temara, who defined 'kāinga' – over which the treaty guarantees tino rangatiratanga – as 'home', as opposed to the place where one lives. The Tribunal also regarded the treaty guarantee of tino rangatiratanga over kāinga as recognition of the right to organise and live as Māori. The claimants contended that this definition had implications for the kinds of measures the Crown needed to introduce to address Māori homelessness. As noted, these included 'the protection of the right to live as Māori' and 'to be sufficiently empowered so that Māori no longer require Crown assistance'.[78] Implicit in this was also the re-establishment of lost connections with tūrangawaewae. Evidently, this corresponded to the claimants' proposed definition of homelessness, which, as we have seen, referred to 'the absence and loss' of kāinga and ahi kā roa.

75. Submission 3.3.79 (Manurewa Marae submissions in reply), p 7.
76. Submission 3.3.81 (claimant joint submissions in reply for Wai 1464 and others), pp 6–8.
77. Submission 3.3.83 (Waimate Taiamai ki Kaikohe Claims Alliance submissions in reply), p 2.
78. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 27.

We do not doubt that article 2 of the treaty guaranteed Māori this kind of independence and authority. It is another matter, however, to apply this guarantee of 'kāinga' to the current homelessness situation of immediate and pressing need. The homeless people we heard from directly, or received evidence about, needed above all the security and dignity of warm, dry, and safe accommodation, coupled with supportive social services. Witnesses spoke of their anxiety or panic about finding a place to live, the lack of structure in their own lives or their children's, and their desperation at the situation they found themselves in.[79] Ideally, Māori would have the option of receiving housing support within the context of a papakāinga, but for many of those in dire need, achieving this ideal will inevitably be of secondary importance. That is, while re-establishing kāinga should be a longer-term objective, most fixes at present need to be much more rapid.

We perceived a slight divergence in the claimants' perspectives on the matter. Counsel for Hurimoana Dennis and Te Puea Marae, for example, referred to 'the obligation on the Crown to provide Kāinga to Māori,'[80] and this sort of sentiment was common amongst claimants. It was perhaps because they sensed that this interpretation of the treaty obligation in article 2 was too narrow that counsel for Manurewa Marae submitted it was 'reasonable to treat, prima facie, housing in its everyday context, as a taonga.' This, counsel said, was because of the 'immeasurable positive social, physical, economic, spiritual and general health and well-being impacts that will result for Māori from healthy, warm and safe housing.'[81] In other words, counsel proposed here that the Crown's obligation was much more fundamental than protecting independent Māori communities, or kāinga, where residents could live and organise as Māori: it was, rather, the promotion of Māori oranga or well-being through housing itself.

In weighing up these somewhat competing emphases, we were persuaded by a point made by counsel for Te Waimate Taiamai ki Kaikohe Claims Alliance. As noted above, he submitted that the long history of colonisation and urbanisation meant that few of the 'kāinga' protected by the treaty still existed. In this regard, he said, the Crown has 'a duty to provide much more than housing, but housing is where the Crown must start.'[82] We agree with this assessment. At a time when the level of Māori homelessness is so high, the 'kāinga' duty today means providing an immediate and adequate substitute for the traditional form of kāinga that has been lost. It requires, above all, the provision of housing that meets a range of basic standards in terms of amenities, comfort, and security. It does not mean housing per se is a taonga, but housing is what the Crown must provide for those whose homelessness is in large part because of their disconnection from their kāinga.

We do not mean that the Crown should provide housing alone, of course. At the onset of the COVID-19 pandemic, for example, the Crown stepped in and

79. Including doc B76 (Shania Hei); doc B18 (Apanui Koopu); doc B50 (Alicia Cassidy); doc B61 (Waki Te Hingawaka Shane Kereama Graham); doc B68 (Ngahuia Owena Hawke); doc B85 (Mary Moeke-Te Purei).

80. Transcript 4.1.8, p 9.

81. Submission 3.3.79 (Manurewa Marae submissions in reply), p 7.

82. Submission 3.3.43 (Te Waimate Taiamai ki Kaikohe Claims Alliance closing submissions), p 11.

housed the homeless, but this was never going to be an adequate response on its own. That is because, given the circumstances in which so many fall homeless, the provision of housing without wraparound support falls short. The Crown may well believe that the alternative to emergency motels is people sleeping in their cars or on the street, but the equation should never be drawn in such stark terms. The point is that, once the Crown had taken that first step, it was incumbent upon the Crown to follow through with further assistance. The evidence we received about the conditions experienced by those living in motels suggests this has not always occurred.

To be clear, the Crown should still support papakāinga projects. Māori-led solutions to homelessness that build a kind of kāinga community – exemplified, perhaps, by the Kohuhu settlement established by He Korowai Trust at Kaitāia (see also the vignette in section 2.9.7 of chapter 2) – are a vital part of the response. But the reality is that this model is not going to work for everyone, especially those in urban environments. 'Living as Māori' does not have to mean living in a papakāinga. For this reason we believe the Crown's fulfilment of its article 2 treaty obligations will include resourcing both papakāinga projects and other solutions for those who cannot, or prefer not, to live in the way Tā Pou's description encompasses. With respect to article 3, the Crown's position that Māori should receive housing services of at least the same standard as non-Māori seemed rather theoretical in the face of such Māori disadvantage. When Crown counsel clarified that the Crown's work to reduce disparities aims to achieve equitable outcomes for Māori at a group or population level, this seemed much closer to the claimant position and is a stance we endorse. It is manifest to us that the principle of equity requires the Crown to take particularly strong action to reduce these disparities. Indeed, Crown counsel agreed with us that the Crown would be in breach of this principle if Māori housing needs were not prioritised.[83] Again, it does not depend on whether housing itself is a taonga or not – the context of Māori land loss and the corresponding absence of the kāinga protected by article 2 means that the Crown holds this duty regardless. As we have said, in the face of the levels of homelessness Māori have experienced in recent years, the Crown must begin to rectify its failure to protect kāinga by providing housing.

In sum, therefore, the Crown does have a treaty duty with regard to housing, arising both from its article 2 obligation to protect kāinga and its article 3 responsibility to ensure equitable outcomes. That duty applies irrespective of whether housing is a taonga.

We will of course have much more to say about the Crown's treaty obligation with regard to housing in our main report. We also acknowledge that, in terms of the Crown's obligations to protect 'kāinga', some of those who are homeless are already on their tūrangawaewae, having retreated to their whenua due to the sheer unaffordability of living elsewhere. Here the Crown's obligation will be somewhat different, but it is not something we can explore at this stage since we are yet to

83. Transcript 4.1.9, p 44.

hear all the evidence about the barriers to building on whenua Māori. We observe, though, that Māori land is a domain where solutions must come from the Māori owners themselves, and it is the Crown's role to support those aspirations rather than to assume the lead itself.

4.2.4 What are the Crown's obligations under international law?

4.2.4.1 *What the parties said*

Aside from the Crown's obligations arising from the treaty, claimant counsel also pointed to other housing obligations arising from international instruments. In generic closing submissions on discrimination, claimant counsel submitted that the human right to adequate housing was set out in many treaties that the New Zealand Government had ratified, including the 1966 International Covenant on Economic, Social and Cultural Rights and the 1989 Convention on the Rights of the Child. The right to housing was, said counsel,

> [a] binding legal obligation of the State of New Zealand. This means the State of New Zealand has agreed to ensure that the right to adequate housing is progressively realised in New Zealand. It is an 'international obligation' that must be performed in New Zealand.[84]

Fulfilling the obligation did not just mean ensuring people had a 'roof over their heads', counsel continued, as the United Nations had defined a series of standards for adequate housing. These included habitability, affordability, security of tenure, cultural adequacy, and so on.[85]

Claimant counsel added that the United Nations Special Rapporteur on the right to adequate housing had visited New Zealand in February 2020, and that her later report concluded that New Zealand's 'legal protection of the right to adequate housing remains relatively weak'. The housing market was subject to excessive speculation and protections for tenants were inadequate. Counsel concluded that, over several decades, successive governments had 'failed to create the conditions which permit everyone to enjoy the right to a decent home'.[86]

Other counsel also raised international law, with one submitting:

> The inclusion of the right to housing in the UNDRIP [United Nations Declaration on the Rights of Indigenous Peoples], the UDHR [Universal Declaration on Human Rights] and in the ICESCR [International Covenant on Economic, Social and Cultural Rights] establishes that the right to housing is a fundamental human right and in this sense, the right to housing is a taonga for the purposes of interpreting te Tiriti ō Waitangi.[87]

84. Submission 3.3.36 (claimant generic closing submissions on discrimination), p 22.
85. Submission 3.3.36 (claimant generic closing submissions on discrimination), pp 23–24.
86. Submission 3.3.36 (claimant generic closing submissions on discrimination), pp 42–43.
87. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 14.

As we have noted above, the Crown's cross-agency working group's task was to consider, among other things, whether housing being a basic human right made it a taonga. In response to the generic claimant closing submissions, the Crown submitted:

> rights in international instruments are commitments by state parties to international law but they are not in and of themselves enforceable in domestic law. Although rights under international instruments may be relevant in the interpretation of domestic law, it remains open to each State to give effect to those rights in domestic law.[88]

Under questioning from the Tribunal, however, Crown counsel accepted that the situation was more complex than their closing submissions allowed, and that certain parts of international law were fundamental principles that could not be departed from. But international law also allowed the Crown to give effect to its commitments 'progressively', counsel said – for example, the International Covenant on Economic, Social and Cultural Rights required states to take action 'to the maximum of its available resources'. Crown counsel further contended that the Government Policy Statement on Housing and Urban Development was 'broadly in line' with these international commitments.[89]

In reply, counsel for Donna Awatere Huata and Te Rūnanga o Kirikiriroa (who also provided the generic submissions on discrimination) wrote that, as a signatory to international agreements recognising the human right to adequate housing, 'the New Zealand Government (both local and central) has a duty to respect, protect and fulfil this right'.[90] Likewise, counsel for Vanessa Kururangi submitted in reply that 'international treaties with direct application to these issues . . . would seem to be clearly mandatory considerations to be taken into account'.[91]

4.2.4.2 *Tribunal analysis*

In the Wai 262 inquiry, the Tribunal noted the Crown's submissions that there were two types of international instruments: legally binding agreements, such as treaties and conventions, and non-binding arrangements, such as declarations and guidelines. That Tribunal also noted that non-binding declarations can, over time, become part of binding customary international law where consensus builds about their application.[92]

For our part, we are satisfied that New Zealand has binding obligations with regard to housing standards as a result of the international agreements the country has entered into – and we note that Crown counsel verbally accepted that

88. Submission 3.3.65 (Crown closing submissions), p 18.
89. Submission 3.3.65 (Crown closing submissions), pp 19–20.
90. Submission 3.3.85 (Donna Awatere Huata and Te Rūnanga o Kirikiriroa submissions in reply), p [8].
91. Submission 3.3.82 (Vanessa Kururangi submissions in reply), p 7.
92. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, *Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 669, 691.

position.[93] On the other hand, we do not understand the basis for the claimant submission that housing is a taonga because access to it is a fundamental human right under international law. We questioned claimant counsel about this but did not feel they clarified the point.[94] In any event, we have no objection to the Crown's cross-agency working group considering this matter, and we welcome further submissions about it in due course.

In making these observations, we note – as the Tribunal remarked when considering the Trans-Pacific Partnership Agreement in 2016 – that our core expertise does not lie in interpreting the application of international instruments.[95] However, we accept that the Crown's obligations to give effect to international instruments – and particularly UNDRIP – are relevant to its obligations to comply with treaty principles. This too was the Tribunal's conclusion in its 2015 report on the Maori Community Development Act 1962, *Whaia Te Mana Motuhake*. That panel explained that it was using UNDRIP 'as a tool . . . to understand the Crown's obligations in specific circumstances, in a way that assists our assessment of Crown actions against the principles of the Treaty'. It described the Crown's consistency with UNDRIP as 'providing additional, specific guidance on the Crown's obligations in light of Treaty principles'.[96]

As we have seen, the claimants' generic closing submissions pointed to the range of international instruments New Zealand has ratified that make mention of the right to adequate housing. As is the nature of such things, none deal specifically with homelessness; in fact the term is not used, although it is of course certainly implied. Rather, the emphasis of these agreements is on housing adequacy, for which, as noted, the United Nations has developed a set of standards. In the context of this report it seems evident that significant levels of homelessness and severe housing deprivation mean that the Crown has fallen short of these international commitments. We consider, however, that we will need to defer an analysis of New Zealand's consistency with international agreements addressing the right to adequate housing until a later report. There we will be able to consider these agreements comprehensively, rather than attempting here to demarcate between homelessness and other issues of housing adequacy.

4.3 The Crown's Response to Homelessness

4.3.1 Has the Crown fulfilled its data collection responsibilities?

4.3.1.1 *What the parties said*

In generic closing submissions on data collection, counsel summarised the claimants' concerns as follows:

93. Transcript 4.1.9, p 45; see also submission 3.3.65 (Crown closing submissions), pp 19–20.
94. Transcript 4.1.8, pp 197–198.
95. Waitangi Tribunal, *Report on the Trans-Pacific Partnership Agreement* (Lower Hutt: Legislation Direct, 2016), p 5.
96. Waitangi Tribunal, *Whaia te Mana Motuhake/In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim* (Lower Hutt: Legislation Direct, 2015), pp 38–39.

> We submit that poor data collection has contributed to New Zealand's homelessness crisis because properly informed decisions are not being made on how to address the crisis. Although many Crown agencies collect homelessness data, they do so in their own ways. . . . [T]here is no standard cross-agency approach to data collection and there is no integrated data management system. Additionally, there are many concerns with the methods used by the relevant Crown agencies to collect data, including Stats NZ and its approach to census taking.[97]

Claimant counsel noted that Alan Johnson, Professor Philippa Howden-Chapman, and Shamubeel Eaqub had identified some of these issues in their February 2018 stocktake on the state of New Zealand's housing. The researchers wrote that 'Apart from Census data, we currently have no reliable way of knowing whether the homelessness problem is improving or deteriorating, and whether funding put into homelessness services is actually working to reduce homelessness.'[98] Counsel submitted that an important gap in the data currently collected was the lack of demand data, showing how many approach services but are turned away. Without knowing the 'turnaway rate', the number of people actually reached by services may be just 'the tip of a larger problem'.[99]

Claimants argued that the lack of standardisation across Crown agencies was a particular problem. Counsel noted that even Crown witness Andrew Crisp had admitted that the available data was not 'co-ordinated, consistent, available and used by everybody'. As a result, there was no 'strong authoritative source' to rely on.[100] Counsel also quoted Professor Howden-Chapman who remarked that the Crown agencies were 'handicapped by not talking the same language'.[101] Here, counsel compared New Zealand with Australia, which had achieved a lasting 'standardised national data collection system' since introducing its 2008 national homelessness strategy, *The Road Home*. The result, said counsel, is much better homelessness data, with over 1,600 'specialist homelessness services' providing data to the independent Australian Institute of Health and Welfare every month.[102]

97. Submission 3.3.33 (claimant generic closing submissions on data collection), pp 4–5.

98. Alan Johnson, Philippa Howden-Chapman, and Shamubeel Eaqub, *A Stocktake of New Zealand's Housing* (Wellington: Ministry of Business, Innovation and Employment, 2018), p 35 (submission 3.3.33 (claimant generic closing submissions on data collection), p 4).

99. Submission 3.3.33 (claimant generic closing submissions on data collection), pp 8, 56. Johnson and colleagues also noted in their 2018 report that during 2017 the 'turnaway rate' for some community providers was between 82 and 91 per cent. This meant that for every 10 people seeking housing only one to two people were being accommodated: Alan Johnson, Philippa Howden-Chapman, and Shamubeel Eaqub, *A Stocktake of New Zealand's Housing* (Wellington: Ministry of Business, Innovation and Employment, 2018), p 35 (submission 3.3.33(a) (claimant generic closing submissions on data collection), p [71]).

100. Transcript 4.1.7, p 221 (submission 3.3.33 (claimant generic closing submissions on data collection), p 22).

101. Transcript 4.1.6, p 262 (submission 3.3.33 (claimant generic closing submissions on data collection), p 22).

102. Submission 3.3.33 (claimant generic closing submissions on data collection), pp 23–24.

Another data collection problem facing local Crown agencies, claimant counsel said, was their markedly different methods of counting ethnicity, despite Statistics New Zealand's statistical standard for ethnicity (we discussed this particular problem in more detail in section 2.3.1 of chapter 2).[103]

Counsel contended that the Crown had been aware of the need for improved homelessness data collection for some time but had consistently failed 'to follow through'. In 2009, for example, officials had proposed that housing and support services data be 'integrated across agencies', but this had not taken place.[104] Then, in 2014, *He Whare Āhuru* had included an outcomes framework and stated an intention to update baseline data to track changes in outcomes. This also failed to happen, we were told. Counsel noted the exchange between the Tribunal and Mr Crisp in which the latter explained that no measurement had taken place and there was '[no] record of change over time'.[105] Counsel recounted that both the cross-party report into homelessness in 2016 and the Johnson, Howden-Chapman, and Eaqub stocktake in 2018 had called for better homelessness data collection. In November of that year, officials had recommended to the Minister a 'data and research work programme' entitled 'Understanding Homelessness', but nothing seems to have come of it.[106] Counsel pointed to further comments made by Crown representatives about the need for better data since 2020 – including in reference to the Data and Evidence Initiative, and the Data Partnership Project – before concluding:

> Based on the information available, we submit that homelessness data collection by the Crown has not improved or been developed. Despite numerous Crown proposals about improved data collection, in 2021, the position remains that the work is still being developed.[107]

The situation, continued counsel, had made the official count of homelessness dependent upon the five-yearly census, which is soon out of date (and even out of date when its results are first known). Moreover, they submitted, the 2018 'digital-first' census was beset with problems and is likely to have significantly undercounted Māori and Pacific people suffering severe housing deprivation; these gaps could not be adequately compensated for through use of the Integrated

103. Submission 3.3.33 (claimant generic closing submissions on data collection), pp 52–53.

104. Housing New Zealand, 'International and National Models of Housing and Support Services', September 2009, p 19 (submission 3.3.33 (claimant generic closing submissions on data collection), p 32); see also doc B98(e) (claimant bundle of Crown documents, vol 5), p [3311].

105. Transcript 4.1.7, p 225 (submission 3.3.33 (claimant generic closing submissions on data collection), p 32).

106. Ministry of Housing and Urban Development, 'Improving Data on Homelessness in New Zealand to Inform Effective Response', November 2018, paras 7–8 (submission 3.3.33 (claimant generic closing submissions on data collection), pp 33–34); see also doc B98(b) (claimant bundle of Crown documents, vol 2), pp 637–638.

107. Submission 3.3.33 (claimant generic closing submissions on data collection), p 38.

Data Infrastructure (see section 2.3.1 of chapter 2). Counsel submitted that it was 'vital' that these problems be resolved by the time of the 2023 census.[108]

Other issues raised in the generic closing submissions included the need for both adequate data privacy provisions and independent monitoring of the Crown's performance and data collection.[109] Counsel noted the Ministry of Housing and Urban Development's intention to 'endeavour to develop appropriate tikanga Māori approaches [for the collection, storage, analysis, and use of data] in collaboration with participants in the Māori housing sector', as well as its 'commitment to utilising Kaupapa Māori methodologies and researchers where appropriate'. Counsel argued that use of the words 'endeavour' and 'where appropriate' raised 'concerns about [the Ministry of Housing and Urban Development's] commitment to kaupapa Māori-based research methodologies', and submitted that the use of such methodologies should be 'mandatory'. Counsel proposed that the Māori Data Governance model designed by the Data Iwi Leaders group and Statistics New Zealand could form '[p]art of the proposed solution'.[110]

Among claimant-specific submissions, counsel for Donna Awatere-Huata and Te Rūnanga o Kirikiriroa endorsed the generic submissions but felt that 'a section on data sovereignty is missing'. As she put it:

> We agree with the notion that a failure to have sufficient data collecting systems can result in a poor development of strategy and policy because the scale of the issue has not been realised but that must be cautioned with the right of Māori to data sovereignty and [to] determine how that data is collected, used and controlled.[111]

Counsel added that, if a new method of data collection were to be used in the 2023 census, it should 'be tempered . . . with a kaupapa Māori framework or as we suggest, the idea of Māori data sovereignty'.[112] Counsel for Te Puea Marae chair Hurimoana Dennis added to the discussion of the Crown's data by noting that the Social Allocation System and the Social Housing Register data systems reflected the 'disjointedness of the Crown agencies'. According to Mr Dennis, the models and methods the Crown used to collect information were 'inefficient and ineffective'; they produced 'inaccurate and limited information, resulting in an assessment that does not reflect actual need'. He also considered that the Ministry of Social Development and Kāinga Ora data systems were not 'in sync'. Counsel therefore called on the Crown to streamline inter-agency coordination

108. Submission 3.3.33 (claimant generic closing submissions on data collection), pp 46, 49. Statistics New Zealand's 'digital-first' approach to the 2018 census meant respondents were encouraged to complete it primarily via the internet: see submission 3.3.33, p 12.
109. Submission 3.3.33 (claimant generic closing submissions on data collection), pp 25–26, 38–39.
110. Submission 3.3.33 (claimant generic closing submissions on data collection), p 29.
111. Transcript 4.1.8, p 388.
112. Transcript 4.1.8, p 388.

for data collection. Failing to do so left claimants with a barrier to receiving urgent support.[113]

The Crown's closing submissions again contained a number of 'acknowledgements' on the matter of data collection rather than 'concessions'. Crown counsel began her closing submissions on the subject of data collection like this:

> The Crown acknowledges the lack of consistent and quality data about the state of Māori housing and homelessness is a real issue which needs to be remedied.
>
> The Crown agrees there is a need for better quality, more timely and informative data available more frequently. There should be regular progress reporting to evaluate whether actions are making a tangible difference for Māori and that reporting should be available to Māori to ensure accountability.[114]

Crown counsel then went on to explain that the Crown recognised these issues, and was responding. Under *Maihi Ka Ora*, it had committed to developing (alongside Te Matapihi) a Māori Housing Data Framework. The Data and Evidence Initiative would be a key aspect of this work.[115]

Crown counsel acknowledged that ethnicity data was collected in different ways by different agencies. The Crown also recognised that the census had inadequacies as a source of data on homelessness (such as its infrequency and the likelihood of homeless people being undercounted), and that the 2018 digital-first census was problematic due to a much reduced field workforce and a poorly executed Māori strategy. However, counsel submitted that several initiatives were in hand to remedy these problems. Statistics New Zealand was 'working to mandate a standard for how ethnicity data should be collected, used, and published across government' and had a programme of work under way to improve Māori participation in the census, including greater iwi involvement in data collection. In addition, the Crown was working to improve the measurement of homelessness in the census.[116]

Despite this, Crown counsel cautioned that establishing a 'standardised data platform' would not be easy, since some datasets were 'large and complex' and needed 'to be held in specialised databases within government agencies'. Issues of privacy and data sovereignty would also need to be addressed, counsel added.[117]

In reply submissions, claimant counsel criticised the Crown for failing to explain the delays in giving effect to the Data and Evidence Initiative during the years that had passed since its introduction, submitting that the 'continued lack of progress with [the initiative] is unacceptable'. Counsel denied there were any practical difficulties preventing the creation of a standardised homelessness data

113. Submission 3.3.46 (Hurimoana Dennis and Te Puea Memorial Marae closing submissions) p 31; doc B14(g) (Hurimoana Dennis), pp 3–4.
114. Submission 3.3.65 (Crown closing submissions), p 73.
115. Submission 3.3.65 (Crown closing submissions), pp 73–74.
116. Submission 3.3.65 (Crown closing submissions), pp 74–76.
117. Submission 3.3.65 (Crown closing submissions), pp 76–77.

platform, as had been achieved in Australia. And counsel emphasised the need for Māori to be involved in mandating a new ethnicity data standard.[118]

4.3.1.2 *Tribunal analysis*

We agree with claimant counsel that the Crown has taken too long to improve the quality of homelessness data in New Zealand. We understand that Government resources are finite, and that there are many competing priorities, but this is an area where the Crown's action has consistently failed to match its stated intention. The shortcomings in the implementation of *He Whare Āhuru*, which we go on to discuss below, are a clear case in point. But we can see that the Crown also had regular external or internal advice to integrate and improve data collection from 2009 until eventually announcing its Data and Evidence Initiative in the Homelessness Action Plan in early 2020. While it is a difficult matter to quantify, given the very lack of data we are discussing, we believe that this delay caused prejudice to Māori experiencing homelessness. The principle of good government requires the Crown to act in a timely fashion on important issues affecting Māori that are drawn to its attention; therefore the delays in obtaining better homelessness data can only be seen as a breach of the principles of good government and active protection.

We are encouraged to hear that Statistics New Zealand is working to mandate a new standard for ethnicity data reporting across Government. We note that the drawbacks of the priority count method are well known, and that Statistics New Zealand has discouraged its use for some time. Nor, of course, is total count without its imperfections. It may be that better engagement with Māori is already occurring, given Statistics New Zealand's 2019 Mana Ōrite Relationship Agreement with the Data Iwi Leaders Group of the Iwi Chairs Forum (previously mentioned in chapter 2),[119] but this was not made clear. We are also unsure of whether this could be described as genuine community consultation with Māori. We leave our comment at that, however, because the measurement of ethnicity is an issue that traverses many other aspects of Government activity besides housing – and because the Crown chose not to provide evidence from Statistics New Zealand.

The same, of course, could be said for the census. However, the failings of the 2018 digital-first census were particularly acute in regard to homelessness, since the census provides by far the most accurate data on the subject. Had the Crown managed to achieve an integrated homelessness data system, these failings would have been much more manageable. Instead, the 2018 census represents a notable lost opportunity to build policy at a time of steadily rising homelessness. Again, the appearance of a witness from Statistics New Zealand would have been of assistance on this issue, including regarding the agency's efforts to ensure a much reduced undercount in 2023.

118. Submission 3.3.75 (claimant generic and specific submissions in reply), pp 5–6, 8–10.
119. Submission 3.3.65 (Crown closing submissions), p 64.

In the context of this discussion of data, this is an appropriate moment for us to mention the housing register. This is because, despite the kind of cautions about its interpretation included in the 2016 cross-party report, it remains an important indicator of housing need and homelessness: as Mr Johnson put it, 'Social housing waiting lists provide us with a fairly accurate and timely account of serious unmet housing need.'[120] In chapter 2, we included figures showing fluctuations in the register since 2009. We were told by expert witnesses such as Mr Johnson and Professor Howden-Chapman that some of the recent surge in numbers on the register was due to the incoming Government's relaxation of the eligibility requirement in late 2017. It is clearly difficult to determine exactly how much of the rise is attributable to this or other factors such as ever-worsening housing affordability and supply. All this suggests that the register numbers over time have been subject to an interplay between policy and need that is not immediately apparent. We trust that evidence to be filed later in the inquiry will help us to make better sense of what the longer-term numbers on the housing register tell us.

4.3.2 Was the Crown sufficiently attentive to homelessness in 2009–16?

4.3.2.1 *What the parties said*

After Statistics New Zealand adopted its homelessness definition in 2009, claimants contended that the Crown paid little attention to the issue of homelessness from then on. For example, claimant counsel pointed to the timeline supplied by the Ministry of Social Development witnesses Edward Ablett-Hampson and Alexander McKenzie, setting out new forms of housing assistance provided by the ministry.[121] This showed a gap in the development of new housing-related benefits (or 'products') between 2006 and 2014, which Mr McKenzie was at a loss to explain.[122] Claimant counsel submitted:

> this time period is key to understanding the Crown's gross lack of urgency in addressing homelessness in New Zealand, despite knowing well in advance about the approaching homelessness crisis. No substantive action can be found by the Crown during that time period.[123]

Commenting further on this pre-existing awareness, claimant counsel said officials drew the Minister of Housing's attention to the problem in 2009. Counsel quoted from a briefing to the minister by the general manager of strategy, policy, research and evaluation at Housing New Zealand, Judy Glackin, in June that year. She remarked that the issue of hidden homelessness had recently received media attention and that various stakeholders were signalling that 'a coordinated national

120. Document C2 (Alan Johnson), p [3].
121. Transcript 4.1.7, p 361; doc D20 (Edward Ablett-Hampson and Alexander McKenzie), pp 5–6.
122. Transcript 4.1.7, p 361.
123. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 36.

approach' was needed.[124] Counsel for Mr Dennis submitted that the Crown was actually 'well aware by at least 2005 (if not prior) that homelessness was an issue in New Zealand', pointing out that the first National Homelessness Forum was held that year and the New Zealand Coalition to End Homelessness established the following year. The minister was even invited to address the forum at the end of 2007, and officials suggested talking points on the subject of homelessness. This briefing, argued counsel, 'provides a baseline to demonstrate the paltry and inadequate attempts by the Crown to address homelessness generally in New Zealand at that time'.[125] Furthermore, while Housing New Zealand had developed strategies to support Māori housing during this time, such as the Māori Capability Committee in 2004 and *Te Au Roa* in 2007, these lapsed or were disestablished following the inception of the Social Housing Reform Programme in 2010. Counsel argued that it was only recently that attempts had again been made to support Māori housing.[126]

In July 2014, the Government published *He Whare Āhuru*, its Māori housing strategy. In generic closing submissions, claimant counsel referred to the strategy's 'fundamental failures', while counsel for Te Matapihi described it as having 'languished without full implementation, updates or sufficient monitoring'.[127] As Te Matapihi's counsel went on to explain, the failure of *He Whare Āhuru* 'to even get underway' was 'a fundamental reason why the claim for Te Matapihi was filed' in 2018, and had caused Māori 'considerable prejudice'.[128] He also contended that the strategy 'should have featured systems and policies that assisted to address the issue of homelessness and severe housing deprivation amongst Māori'.[129]

The claimants' broad arguments about the shortcomings of the Crown's data collection practices have already been summarised above. But the effect of those practices on *He Whare Āhuru* was also the subject of specific criticism – namely, that the Crown had failed to collect data with which to assess the strategy's achievements. Claimant counsel noted that the strategy had stated that the Ministry of Business, Innovation and Employment would 'update data in the *Māori Housing Trends Report 2010* to provide a base-line to track progress towards achieving *He Whare Āhuru*'s six directions'.[130] Counsel submitted that the Crown's concession that it had not followed through on this undertaking (see below) was typical of the Crown's 'inability to properly implement' its own 'proposals to improve data collection'.[131]

124. Document B98(e) (claimant bundle of Crown documents, vol 5), pp 2734–2735 (submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 138–139).
125. Submission 3.3.46 (Hurimoana Dennis and Te Puea Memorial Marae closing submissions), pp 14–15.
126. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 207–208.
127. Submission 3.3.35 (claimant generic closing submissions on housing policy and strategy), p 95; submission 3.3.51 (Te Matapihi closing submissions), p 4.
128. Submission 3.3.51 (Te Matapihi closing submissions), pp 13, 17, 35.
129. Submission 3.3.51 (Te Matapihi closing submissions), p 4.
130. Document A4 (*He Whare Āhuru He Oranga Tangata – The Māori Housing Strategy*), p 38.
131. Submission 3.3.33 (claimant generic closing submissions on data collection), p 31.

Mr Dennis considered that *He Whare Āhuru* was a sound strategy but that it 'fell over' when its 'champion', Tariana Turia, left Parliament in 2014.[132] His counsel submitted that '*He Whare Āhuru* fell victim to the situation described by Mr Figenshow in relation to the HSAG Report; that settings change when Ministers and institutions change, resulting in a destabilising effect on the success of policy implementation'.[133] Mr Dennis said that 'Crown agency inaction and omissions only exacerbated an already growing whanau homeless issue that had remained largely hidden and unreported.' In this context he related how, in 2016, he had publicly described the state of homelessness as a 'crisis'; while the Prime Minister had denied it, the Social Development Minister, Paula Bennett, had agreed.[134]

The Crown made some early concessions about *He Whare Āhuru* in opening submissions. It is worth setting these out in full:

> 9.13 . . . the Crown concedes that in the early part of the period pertaining to this stage of the inquiry, its response to Māori experiencing homelessness was inadequate having regard to the principles of the Treaty and was not at the standard expected of the Crown having regard to all relevant circumstances at the relevant time, and to standards of reasonableness in that context. In particular:
>
> 9.13.1 while *He Whare Āhuru He Oranga Tangata – The Māori Housing Strategy 2014* was an important step in addressing disparities, it was not implemented with sufficient prioritisation, pace or resource to address the disparities that existed for Māori in housing or to counter the negative impacts on whānau, hapū and iwi of the worsening housing situation, despite the efforts of Te Puni Kōkiri, through the Māori Housing Network; and
>
> 9.13.2 distinct from *He Whare Āhuru He Oranga Tangata – The Māori Housing Strategy 2014* and its implementation, through the Māori Housing Network, the Crown did not take sufficient steps to address the growing numbers of Māori experiencing homelessness when the extent of the disparity between Māori and non-Māori could reasonably have been apparent to the Crown.[135]

The claimants did not entirely welcome these concessions. Counsel for Te Whānau o Waipareira Trust and the National Urban Māori Authority, for example, described the concession as 'extremely narrow'. He also took issue with the way Te Puni Kōkiri was 'excuse[d] . . . from culpability'.[136] Counsel for Ngāti Hine and Te Kapotai likewise described the concession as 'narrow', adding that 'It is not entirely clear what "early part" of this inquiry means, . . . the reference to *He Whare Ahuru*

132. Document B14(d) (Hurimoana Dennis), p 10.
133. Submission 3.3.46 (Hurimoana Dennis and Te Puea Memorial Marae closing submissions), p 19.
134. Document B14 (Hurimoana Dennis), pp 15–16.
135. Submission 3.3.32 (Crown closing submissions), p 7.
136. Submission 3.3.45 (Te Whānau o Waipareira Trust and the National Urban Māori Authority closing submissions), p 10.

in 2014 suggests the Crown may be referring to 2009–2014 only, however this is unclear.'[137]

It certainly appears as if the Crown was willing to concede shortcomings in its response to Māori homelessness not just in the period up to 2014, but perhaps until at least 2016 as well. The concession covering the failure to implement *He Whare Āhuru* adequately after its launch in 2014 suggests as much. When cross-examining Mr Dennis – who maintained that the Crown had singularly failed to prepare for the growing extent of homelessness that had been signalled for years – Crown counsel suggested that what mattered was whether the Crown was addressing matters adequately now:

> I think, you would have no disagreement from the Crown or anyone in this whare, and if we could turn back the clock, we would. So, it's all well and good to say people knew about these things 10 years ago, action has been too slow, acceptance of those things now is one thing, the remedy is the issue right now for people who are homeless. Would you agree with that?[138]

Mr Dennis would not agree, remarking that was 'a bit rich' for the Crown to take this position, especially when homeless people were 'still coming' to Te Puea.[139] Nonetheless, the Crown persisted with this defence in closing: Crown counsel argued that 'it is important, in hearing the Crown's evidence, to understand not just where the Crown has come from (which has resulted in the disproportionately poor housing outcomes for Māori), but also where the Crown is headed'.[140]

4.3.2.2 *Tribunal analysis*

The Crown has conceded that its actions fell short of treaty standards in 'the early part' of the period in time covered by this stage one inquiry. It has thus accepted that its actions and omissions during this time caused prejudice to the claimants. We agree, and thank the Crown for its acknowledgement.

We note that the Crown did not specify which treaty principles it had breached, but we consider that they included active protection, equity, and good government. The Crown breached the principle of active protection by not providing homeless Māori with housing that meets a range of basic standards in terms of amenities, comfort, and security. The Crown was overly passive in dealing with a serious issue. The breach of the principle of equity is clear in the increasing over-representation of Māori among those with unmet housing need, as judged by the growing proportions of those on the housing register identifying as Māori. And

137. Submission 3.3.39 (claimant joint closing submissions for Wai 1464 and others), p 87.
138. Transcript 4.1.5, p 49.
139. Transcript 4.1.5, p 49.
140. Submission 3.3.65 (Crown closing submissions), p 42. Crown counsel here was drawing from the statement by Andrew Crisp in his brief of evidence that 'I think it is important for the Tribunal, in hearing the Crown's evidence, to understand not just where we have come from (which has resulted in the disproportionately poor housing outcomes for Māori), but where we are currently and where we are headed': doc D1 (Andrew Crisp), p 4.

the Crown breached the principle of good government by failing to act on its own undertakings in *He Whare Āhuru* and allowing matters to languish until a crisis became all too apparent.

As we have seen, the Crown also did not specify an exact time period to which its concessions applied. As indicated above, we consider that the Crown's implication was that this time span continued from 2009 to at least the first half of 2016. Thus, its concession covers not only the failure to implement *He Whare Āhuru* but also the earlier mainstreaming by Housing New Zealand in 2010 of its Māori strategy, *Te Au Roa*. On the latter, it is unfortunate that Housing New Zealand relinquished a strategic focus on Māori just after Statistics New Zealand had adopted a definition of homelessness. We are aware that at least one other agency similarly subsumed its Māori strategy into a more generic one at around the same time,[141] perhaps reflecting a broader Government drift away from Māori-specific initiatives. With regard to *He Whare Āhuru*, we are conscious that it did not focus on homelessness. However, it stands to reason that its successful implementation would have mitigated some of the worst impacts of the growing problem of homelessness that reached widespread public attention in 2016.

4.3.3 The potential of the latest policies and strategies

4.3.3.1 *What the parties said*

We now switch our attention to where the Crown is headed. Some claimants expressed support for the Crown's more recent actions. Mr Dennis described MAIHI as having 'a lot of potential',[142] and he clearly had confidence in Kararaina Calcott-Cribb, the head of Te Kāhui Kāinga Ora. Ricky Houghton similarly praised Mrs Calcott-Cribb,[143] and Ali Hamlin-Paenga also thought well of the Ministry of Housing and Urban Development generally, including its chief executive.[144] But there were limits to the claimants' support. Mr Dennis thought it 'too early to say' whether Māori in senior positions would make a difference. As he put it, 'we're not at the point where we can be confident that Crown agencies have got themselves established and quite frankly it'll be a couple of years before that actually starts kicking off'. What he felt MAIHI needed was 'its own autonomy, end to end, emergency housing all the way to papa kāinga, otherwise all we are going to be doing . . . is like I said, putting new tyres on an old car'.[145] Wayne Knox of Te Matapihi agreed that there had been positive change but joined Mr Dennis in calling for Mrs Calcott-Cribb to be given more authority.[146]

Claimant counsel went further in their critique of recent Crown initiatives. Counsel for Mr Dennis submitted that 'the Crown cannot point to the introduction

141. For example, the Department of Corrections did so with its *Māori Strategic Plan* in 2011; see Waitangi Tribunal, *Tū Mai Te Rangi! Report on the Crown and Disproportionate Reoffending Rates* (Lower Hutt: Legislation Direct, 2017), p 29.
142. Transcript 4.1.5, p 53.
143. Transcript 4.1.5, p 560.
144. Transcript 4.1.6, p 533; see also doc B8 (Ali Hamlin-Paenga), p 8.
145. Transcript 4.1.5, pp 55, 56, 61.
146. Transcript 4.1.5, p 228.

of new strategies and policies to absolve itself of its breaches of Te Tiriti throughout the entirety of the period from 2009 to present'.[147] In generic closing submissions, counsel argued that the Crown could not point to any 'actual benefits' of its new policies yet.[148] She expanded on this under questioning:

> [O]ne thing that I sort of felt coming through these hearings was that the Crown was very quick to be like, 'Yes, yes, I know we haven't done a great job over the past decade, but look at this great new plan, let's look at the solutions,' and I just firstly think that it's a bit disingenuous to not actually acknowledge the hurt and the really horrible effects of the failing of those policies. Those are people and you can't just sort of brush that to the side and say, 'Well look at this great new policy.'[149]

In generic claimant closing submissions, counsel even contended that the '[r]ecent steps by Kainga Ora to formulate a strategy has been in response to this inquiry'. This work had been, submitted counsel, 'tokenistic'.[150]

Several claimant witnesses argued that new strategies in and of themselves meant little. Mr Tamihere remarked that 'you can have the best political desires on policy but by the time it hits the street it doesn't match'.[151] Mr Houghton likewise described the Homelessness Action Plan as 'very much a wish list, rather than a meaningful and effective plan to get on with the urgent job'.[152] He explained that it looked 'lovely', but unless it had a budget and 'an allocation methodology it's a wish list'.[153]

For his part, counsel for Te Matapihi felt judgement had to be withheld about the Crown's new set of policies and plans because it was 'too soon'. He submitted that Te Matapihi and other Māori organisations were trying to engage with the significant changes, but 'Te Matapihi has been here before; they were involved in the drafting and production of *He Whare Āhuru*'. That experience had left Te Matapihi reluctant to enthuse about the Crown's new-found commitment just yet. Regardless, counsel submitted that 'neither *MAIHI Ka Ora*, nor [the Government Policy Statement on Housing and Urban Development] can feature in the Tribunal's assessment of homelessness in this Inquiry, as the material has only now been released, has not been tested as evidence, and is not yet in place'.[154]

With regard to the Crown's position, we have already noted that it preferred us to focus on its current suite of policies rather than its admitted shortcomings in

147. Submission 3.3.46 (Hurimoana Dennis and Te Puea Memorial Marae closing submissions), p 49.
148. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 221.
149. Transcript 4.1.8, p 101; transcript 4.1.8(f), p [2].
150. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 210–211.
151. Transcript 4.1.5, p 275.
152. Document B89 (Ricky Houghton), p 15.
153. Transcript 4.1.5, p 576.
154. Submission 3.3.51 (Te Matapihi closing submissions), pp 16–17.

earlier years. It pointed to the establishment of the Ministry of Housing and Urban Development in 2018, including its Māori unit, Te Kāhui Kāinga Ora; the 2019 transformation of Housing New Zealand into Kāinga Ora; the application of both the MAIHI Framework for Action and the Homelessness Action Plan in 2020; the issuing of the Government Policy Statement on Housing and Urban Development in 2021; the launch, also in 2021, of *MAIHI Ka Ora*; and 2021 budget investments such as Whai Kāinga Whai Ora. As Crown counsel put it in closing:

> Respectfully, the Crown submits that its response has increased substantially in scale and pace in the face of this challenge. It has made its commitment to addressing Māori housing needs and its commitment to partnerships clear. Progress is being made to respond to Māori homelessness. MAIHI–Framework for Action, the HAP and *MAIHI Ka Ora*, with Māori-led, kaupapa Māori approaches front and centre, take a large step forward in the step change needed.[155]

In highlighting these efforts, the Crown was also careful to emphasise that it was making progress but still had some distance left to go. Crown counsel described the Crown as having made 'a good start' in terms of meeting its treaty obligations, but added that 'it is certainly not the end'.[156] The Crown was, she said, 'on a learning journey'.[157] Here, she pointed to Mr Crisp's invitation to the Tribunal to make recommendations that would enable the Ministry of Housing and Urban Development to 'do better to partner and work with iwi Māori'.[158] With regard to the Crown's ability to understand or apply kaupapa Māori principles (a subject we return to separately below), Crown counsel emphasised that the 'the journey along the ara has to begin somewhere', and the Crown was making an effort to learn.[159]

Despite these caveats, the Crown certainly laid emphasis upon what it regarded as its forward trajectory. It pointed, for example, to the fact that technical claimant witnesses such as Dr Groot and Jacqueline Paul had praised MAIHI, and George Hatvani had done likewise for the Homelessness Action Plan.[160] And in Crown counsel's questioning of claimant witnesses there was also a clear tendency to suggest that, regardless of what had happened in the past, the Crown now had its house in order. We have already noted how Crown counsel suggested to Mr Dennis that 'the remedy is the issue right now', not past omissions. She also asked him whether the 'number of Māori who now hold senior positions in various agencies' meant that 'the understanding is changing' (to which Mr Dennis gave his 'too early to say' answer quoted above).[161] Likewise, counsel suggested to Wayne Knox that 'the embedding . . . of MAIHI principles in the many housing policies

155. Submission 3.3.65 (Crown closing submissions), pp 100–101.
156. Submission 3.3.65(c) (Crown response to claimant issues), p 1.
157. Submission 3.3.65 (Crown closing submissions), p 65.
158. Submission 3.3.65 (Crown closing submissions), p 34, citing transcript 4.1.7, p 26.
159. Submission 3.3.65 (Crown closing submissions), p 64.
160. Submission 3.3.65 (Crown closing submissions), pp 43–44.
161. Transcript 4.1.5, pp 49, 55.

and programmes' was 'going to make positive change.'[162] And she asked Dr Groot whether 'the HAP provides new initiatives and sets a plan and a vision that hasn't been put down on paper before?'[163]

In reply submissions the claimants reiterated their scepticism about the promise of the Crown's recent policies.[164] Counsel for Te Whānau o Waipareira Trust and the National Urban Māori Authority pointed to 'the Crown's long history of production of policy with little funding, a failure to allow Māori to participate, and less follow through'. He went as far as to argue that the Crown was 'using the fact of MAIHI to deflect allegations of Tiriti breach.'[165] Counsel for Te Matapihi repeated that it was too soon to analyse the effectiveness of the Crown's new policies, and proposed that – given the likely length of our inquiry – we should schedule 'a process to revisit these new policies at a later stage, perhaps once all the other Housing aspects have been addressed'. At that point, said counsel, we would be able to issue findings and recommendations on MAIHI, the Homelessness Action Plan, and the Government Policy Statement on Housing and Urban Development.[166] Counsel for Mr Dennis and others submitted that 'it is far too early to determine whether [MAIHI] will deliver on the Crown's claims', adding that the claimants had 'heard the Crown make these promises before'.[167]

4.3.3.2 *Tribunal analysis*

On due reflection, we essentially agree with the position put forward by counsel for Te Matapihi. That is, we also believe it is too soon for us to pass judgement on the Crown's recent suite of policies and strategies. Our hearings took place in 2021 and some of the principal developments, like the Homelessness Action Plan and MAIHI, were introduced only the year before. Just as we are precluded from considering contextual matters that arose before our agreed starting point of 2009, nor can we assess developments beyond the close of our hearings. Even if we could, however, it would still be premature to assess their impact.

In any case, it must be remembered that we have the remainder of our inquiry left to return to these issues. That is, when we eventually hear claims concerning broader aspects of the housing system, we assume that homelessness will be referred to again in that context. That is why we have allowed the Crown to continue to file updates (see section 1.3 of chapter 1),[168] but have chosen not to rely on

162. Transcript 4.1.5, p 228.

163. Transcript 4.1.6, p 114. For Wayne Knox and Shiloh Groot's responses, see also transcript 4.1.5, p 228; transcript 4.1.6, p 114.

164. Both counsel for Te Whānau o Waipareira Trust and the National Urban Māori Authority and counsel for Manurewa Marae used the word 'sceptical': submission 3.3.77 (Te Whānau o Waipareira Trust and the National Urban Māori Authority closing submissions), p 1; submission 3.3.79 (Manurewa Marae submissions in reply), p 3.

165. Submission 3.3.77 (Te Whānau o Waipareira Trust and the National Urban Māori Authority closing submissions), pp 1, 10.

166. Submission 3.3.70 (Te Matapihi submissions in reply), pp 6–7.

167. Submission 3.3.86 (claimant joint closing submissions in reply for Wai 2699 and others), p [12].

168. Memorandum 2.6.31, p 3.

them in this report. It is not that we regard policy updates as irrelevant, but merely that we had to draw the line somewhere in order to issue our homelessness report. Even if we made findings now on the Crown's current policies and strategies, we have no doubt that the parties would want to make further submissions on them at the close of our main inquiry, as indeed they should.

We do accept, nonetheless, that the Crown has taken steps forward since Minister Bennett acknowledged the housing crisis in 2016. This is undeniable, although we might add that this has occurred from a rather low starting point. But at least now there is a national homelessness plan and a new Māori housing strategy. The Ministry for Housing and Urban Development seems a more appropriate and focused agency to lead policy than the Ministry of Business, Innovation and Employment, and the legislative mandate of Kāinga Ora appears more focused on Māori needs than existed in the time of Housing New Zealand. Greater sums have now been budgeted for housing initiatives. It might be observed, of course, that these changes were necessitated by the scale of the problems that had become readily apparent by 2016.

Some of the claimants suggested that the Crown was implementing new initiatives for the sake of appearances in our inquiry. This may be so; at the very least, the inquiry may have hastened some developments. Moreover, we note that the 'hiatus' the Crown sought in mid-2018 (see section 1.2 of chapter 1) was clearly designed to buy it some time when it was changing tack with its housing policies. The reality is that the Crown's breaches of the treaty during the period covered in this inquiry lie substantially in the decade of inaction before the inquiry began, and no amount of good new intentions can disguise that.

We anticipate we will be in a position to make findings on the Homelessness Action Plan, the MAIHI Framework for Action, and other recent Crown initiatives when we issue a later report. By then the new policy direction will have been in place for a number of years. We will be able to assess what the 2023 census reveals about the numbers suffering severe housing deprivation; we will have had several more years of housing register data; and we will also be able to track longer trends in the numbers receiving emergency housing special needs grants. We will be able to reflect on whether there has been progress in expanding the stock of social housing, and to assess the extent to which the Crown has built genuine partnership with Māori communities in the delivery of housing services. We will also be in a position to assess the extent to which this gives effect to the principle of options.

For now, we want to make a couple of observations. First, we believe that the sums the Crown has put aside in its budget, while significant, must not be misunderstood as fixes for the problem. The scale of housing deprivation in rural locations, for example, cannot be remedied by the Whai Kāinga Whai Oranga pūtea, even if it represents a substantial new investment. As Gareth Kiernan and others have pointed out, New Zealand remains tens of thousands of State houses short of where it would have been if the 1991 proportion (5.4 per cent of dwelling stock) had been maintained. And the use of motels as emergency housing – which dates back at least as far as 2016 but intensified during the COVID-19 pandemic – is most

definitely no solution in and of itself. It concentrates people with acute needs in one location and with negligible support, thus exacerbating some of the pressures in their lives. It clearly is not so much a relief in some cases as an intensification of stress, particularly given the length of time many people spend in such settings. It is also very expensive. Slowly and surely – as the Homelessness Action Plan itself recognises – that money needs to be expended less on emergency accommodation and more on longer-term and sustainable solutions, like expanding the number of State houses.

4.3.4 The Crown's approach to consultation: is it adequate?

4.3.4.1 *What the parties said*

Part of the claimants' scepticism about the value of the Crown's new policies and strategies stemmed from what the claimants saw as inadequate consultation with Māori about them. The Homelessness Action Plan, they said, had been developed rapidly in the latter part of 2019 and without adequate consultation. The claimants accepted that there had been engagement with Māori about the plan, but they argued that it was too narrow, by invitation only, and without the participation of those with lived experience or representatives of small collectives such as whānau or hapū. Representatives of Te Puea Marae had not been invited, despite their experience in developing Manaaki Tangata E Rua.[169] Counsel for the marae submitted that the Crown should have looked beyond its established relationships with the likes of the Iwi Chairs Forum and consulted with hapū, marae, and smaller kaupapa Māori groups within the community.[170]

The claimants also argued there had been insufficient consultation on the MAIHI Framework, with the principal input coming from a hui in late 2019 to which only a small number of participants were invited.[171] Once again, Hurimoana Dennis and Te Puea Marae were not included.[172] Rather, the Crown engaged with a group of Māori housing experts and iwi leaders, including three representatives of Te Matapihi. The apparent narrowness of this engagement drew criticism from the claimants. Counsel for Te Puea Marae referred to 'the Crown's reliance on its engagement with Te Matapihi to tick its Māori consultation box'. She added that, 'With the utmost respect to the expertise of Te Matapihi, it is our submission that the Crown cannot solely rely on one organisation to represent all Māori voices within the housing sector, particularly where you have people such as Mr Dennis who are saying, "We have a different view, 'or, "We have further contributions to make."'[173]

In a similar vein, counsel for Patuharakeke submitted that 'many of those who are at the coalface, who have that intimate knowledge of what is necessary and

169. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 61–63, 143.
170. Transcript 4.1.8, pp 44–45.
171. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 124–125.
172. Document B14(d) (Hurimoana Dennis, p 11.
173. Transcript 4.1.8, p 214.

what is needed in their rohe, are forgotten or put by the wayside in preference [to] the ones who do sort of make the cut so to speak'.[174] She added later that Te Matapihi was filling 'a pseudo-conduit consultation role for the Crown', and that Patuharakeke 'do not accept that their voice is represented appropriately by any other group, whether at an iwi or pan-iwi level'.[175] The claimants also argued that the Crown's intention to share governance over Māori housing policy with Māori in 2019 had retreated into merely holding the MAIHI Whare Wānanga every year. The principal attendees at the first whare wānanga had been Te Matapihi and iwi chairs, but counsel submitted that the latter were 'not representative of all iwi or hapū nor do they have specific authority to deal or engage with the Crown on behalf of hapū and iwi'.[176]

The focus on its role prompted counsel for Te Matapihi to respond as follows:

> Te Matapihi does not hold itself out be a mandated organisation to speak on behalf of all Māori. . . . I agree it is very easy for the Crown now to come to Te Matapihi because the relationship has been established following years of effort, but as I've already mentioned, I think this inquiry shows that the Crown needs to wake up and figure out a broader consultation system. . . . Te Matapihi is not interested in being a consultation conduit. They don't – they're not designed to operate that way and the work that that would take would move them away from the work that they actually need to do.[177]

There was further complaint from some claimants about consultation over *MAIHI Ka Ora*, the new Māori housing strategy released in September 2021. Counsel for Manurewa Marae submitted that, despite its talk of partnership, the Crown had failed to include their clients in its engagement over the strategy, even in the midst of our inquiry.[178] It transpired in due course that Manurewa Marae had been emailed an invitation to participate by Te Matapihi, but had not responded.[179] Regardless, counsel for Manurewa Marae maintained that it was 'not acceptable . . . for the Crown to say that invitation was extended to the Claimants by Te Matapihi. The fact is that there was no outreach from the Crown to Manurewa Marae.' As such they contended that the Crown had breached the principle of partnership.[180]

It was not just the Ministry of Housing and Urban Development that was criticised for its lack of consultation. The claimants also denounced the Ministry of Social Development for what they saw as its failure to adequately consult with Māori over its Māori strategy, Te Pae Tata (see below). Mr Dennis argued in particular that Te Puea Marae had not been consulted, despite its experience

174. Transcript 4.1.8, p 82.
175. Submission 3.3.71 (Patuharakeke submissions in reply), p 5.
176. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 127.
177. Transcript 4.1.8, pp 440–441.
178. Transcript 4.1.8, pp 266–267, 271–272.
179. Memorandum 3.2.299 (Te Matapihi memorandum), p 1.
180. Submission 3.3.79 (Manurewa Marae submissions in reply), pp 10–11.

in dealing with homelessness.[181] Claimant counsel also made the point that the Ministry of Social Development failed to consult Māori generally about its benefits, despite Māori being over-represented among housing beneficiaries. Here, Counsel focused on the Crown's admission in its own evidence that the Ministry had no record of 'targeted consultation with Maori in the original development' of the Emergency Housing Special Needs Grant. Overall, submitted counsel, the Crown was 'simply failing to account for the lived experience of Māori in their strategy and policy development'.[182] The claimants also contended that Kāinga Ora had been preparing a new Māori strategy 'in response to this inquiry', but this process was 'yet to reach the point where Māori are consulted in the proposed strategy and overall appears to be tokenistic'.[183]

Some claimants went further than wanting the Crown to consult better about its strategies and policies, preferring instead the idea that the Crown should simply provide Māori with the necessary resources and 'get out of the way' (an expression used by several witnesses).[184] When questioned by Crown counsel how this would work 'in practical terms', Mr Knox suggested that it could involve the creation of a Māori housing authority, a subject we return to below. He qualified the idea of the Crown needing to fully step aside, though, accepting the need for 'checks and balances', but maintained that there were 'too many strings attached' to the resources that were provided.[185] For her part, Ali Hamlin-Paenga of Kahungunu Whānau Services (and the deputy chair of Te Matapihi) emphasised that Māori had the answers to the problem of homelessness and should be granted control: 'We can't continue to ignore Māori solutions. It's at your feet. It's there. It's right in front of you. Just kindly step out of the way and let us through. We are ready.'[186]

Examples of matters over which she felt the Crown should cede decision-making control to organisations like her own included enrolling applicants on the social housing register and allocating housing, as well as acting as the landlord for Kāinga Ora properties.[187]

In response, the Crown accepted that it had a treaty duty, 'in accordance with the principle of partnership, to engage with Māori in the development of housing policy and services'. However, it found itself in the difficult position of both having to consult widely and to work 'at pace to deliver much needed housing'. It accepted that this urgency was not a reason to neglect 'meaningful consultation' or to breach the principle of partnership, but it was 'genuinely trying to find a balance that works for both parties and invites suggestions from the Tribunal as to how

181. Document B14(g) (Hurimoana Dennis), pp 11–12.
182. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 59–60, 173; doc D19 (Crown bundle of evidential fact sheets for the Ministry of Social Development), p [14].
183. Submission 3.3.56 (Vanessa Kururangi closing submissions), p 16.
184. Document B54 (Wayne Knox), p 5; transcript 4.1.5, p 744; transcript 4.1.6, p 523.
185. Transcript 4.1.5, pp 230–231.
186. Transcript 4.1.6, p 523.
187. Document B8 (Ali Hamlin-Paenga), p 7.

to achieve this balance.'[188] In any event, the Crown refuted the suggestion that it was only willing to engage at a 'national level' or with 'representative groups.'[189] It explained that there were unavoidable limits on how widely it could consult:

> The Crown submits it is a reality that while relevant Crown agencies take advice as to who, where and how to engage, there are inevitable constraints on abilities to engage or consult caused by factors such as limited time, limited resources and indeed the fact that many groups can have consultation fatigue with so many requests for hui over different kaupapa. This is not an excuse for not being able to reach all people, simply a matter of reality which both parties to te Tiriti must work together to address.[190]

More specifically, in his brief of evidence about the Homelessness Action Plan, Ministry of Housing and Urban Development witness Jeremy Steele referred to 'engagement' with Māori over the plan. This consisted of regional workshops (that appear to have also included non-Māori organisations such as local authorities), '[i]n-depth interviews' with Māori housing providers, and discussions with Te Matapihi, the Iwi Chairs Forum, and Māori housing experts.[191] With regard to the MAIHI Framework, Mrs Calcott-Cribb said that it was 'developed' at a hui in October 2019 'with Iwi and Māori housing experts', whom she named. Her list included three representatives of Te Matapihi, an Iwi Chairs Forum 'technician', and various iwi leaders and social service providers.[192] Neither Mr Steele nor Mrs Calcott-Cribb referred to the development of these documents as having constituted 'co-design'.

Marama Edwards, deputy chief executive Māori communities and partnerships at the Ministry of Social Development, rejected the idea that there had been inadequate consultation on Te Pae Tata, claiming that the ministry had gone 'far and wide'. As she put it, 'we met with a number of our providers, some who were affiliated to iwi, we also met with a number of staff across the country and also whānau who use our system'. In the second phase of consultation, to 'make sure that we had heard right', the ministry used a survey and had over 5,000 responses. With respect to Te Puea Marae specifically, she asserted that the ministry's director for Māori had visited the marae and reported back on 'how Te Puea were operating on the ground'. She added that 'we were able to take that information and use that to inform Te Pae Tata.'[193]

Ms Edwards also explained that the ministry took advice from two Māori groups. The first was its Māori reference group, an external group of Māori leaders and social policy experts who, Ms Edwards said, 'advise on existing and

188. Submission 3.3.65 (Crown closing submissions), p 52.
189. Submission 3.3.65 (Crown closing submissions), p 53.
190. Submission 3.3.65 (Crown closing submissions), p 56.
191. Document D7 (Jeremy Steele), pp 6–7.
192. Document D6 (Kararaina Calcott-Cribb), p 6.
193. Transcript 4.1.7, pp 308–309.

proposed policy and practice throughout the organisation.'[194] There was also Ngā Mātanga Māori, an external group brought together by the ministry to help with its response to *Whakamana Tāngata* (see section 4.3.8). We were told that Ngā Mātanga Māori meets independently to identify kaupapa Māori values for use in a framework that it is intended will underpin the welfare system. Its members are a mixture of Māori leaders and academics. Two individuals are members of both the Māori reference group and Ngā Mātanga Māori.[195] Under cross-examination, Ms Edwards explained that

> we do have our Māori reference group which we engage with on a regular basis around some of our meaty kind of policy and development issues, but there is not much opportunity in turning some of this around, in terms of providing advice, so we've built some capability within our organisation to be able to do that. But, again, that still, I think in our view, would fall short of what we would say would be engagement with Māori, you know, so any advice in respect to how we could do that better, happy to receive it.[196]

4.3.4.2 *Tribunal analysis*

It is clear to us that the Crown cannot consult every hapū or marae on housing issues. Such exhaustive consultation would be self-defeating in the context of the current urgency. However, the Crown must recognise that there is a community of interest in Māori homelessness and its effects that is much wider than the iwi leaders. While Te Matapihi is a representative body of Māori housing interests and advocates, it does not itself purport to represent all such interests and nor does it wish to be the Crown's go-to organisation for consultation.

In other words, the Crown must resist the temptation to default to Te Matapihi or the iwi chairs. It must, as the Wai 262 Tribunal put it, 'go beyond "the usual suspects"'.[197] And, since widespread consultation is not always practical, it must look to build smaller, representative groups from among the range of voices actively involved in Māori housing solutions. Again, as the Wai 262 panel put it, many of those who could comprise such a representative group essentially 'pick themselves'[198] – in fact, we suspect a large proportion of them have participated in our inquiry.

It is this community of interest that the Crown should work with. The likes of Te Puea Marae and Manurewa Marae, to the extent that they are offering something unique, should probably be part of that engagement. We also see great value in

194. Document D8 (Marama Edwards), p 7.
195. Transcript 4.1.7, pp 274–275, 279.
196. Transcript 4.1.7, p 314.
197. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, *Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 580.
198. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, *Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 580.

more inclusion of those with lived experience of homelessness, since their understanding cannot be matched by other participants. If a manageable, representative cross-section of Māori interests can be assembled – which could still include the iwi chairs – then the Crown has the opportunity to co-design homelessness policy with them. 'Co-design' is a concept that is often referred to in Government policy-making but has received limited attention before the Tribunal. Its nature or definition was not addressed in submissions, and we do not intend to take this discussion much further here. But we certainly regard co-design as a more evolved expression of partnership than mere consultation or 'engagement'. It clearly sits towards the 'collaborate' or 'empower' end of the commonly used International Association for Public Participation's Spectrum of Public Participation.[199] And, if the Crown co-designs Māori homelessness policy with a targeted and representative group, it can still consult more broadly beyond that, to the extent that time permits.

As for the Ministry of Social Development, we consider there is ample scope for it to elevate the status and role of its Māori reference group. This group could be empowered to take more of the initiative by being actively provided with data and other information. As it stands, from what Ms Edwards explained, the reference group remains essentially reactive to Ministry requests for advice. We make this observation in passing, however, because we have not heard from the group's members, and lack detailed insight into how it operates. Were the reference group to play an enhanced role, a change to its membership might be required, with the group perhaps being selected by Māori themselves rather than at the ministry's invitation. Regardless of the specifics of this case, though, we believe in the general principle that independent, expert Māori voices should be able to influence policy-making when the Māori interest in the kaupapa is so overwhelming.

In sum, then, we consider that the Crown breached the principle of partnership by the narrowness of its consultation over the Homelessness Action Plan and the MAIHI Framework. In favouring consultation with Māori housing providers, especially as represented by Te Matapihi, and iwi chairs, the Crown failed to contemplate the existence of a broader Māori community of interest in housing and homelessness. Nor were its regional workshops concerning the action plan, which included local authorities and non-government organisations, targeted at Māori specifically; thus the Crown's treaty partner was treated as an undifferentiated stakeholder. We acknowledge that many claimants were eventually satisfied with the action plan and the framework, but this cannot excuse the original omissions.

From the evidence, it was not clear to us whether the Crown adequately included a broader array of Māori perspectives in developing *MAIHI Ka Ora* or the new Kāinga Ora Māori strategy, as these developments took place during the course of our inquiry. We also refrain here from passing judgement on the development of Te Pae Tata, about which the evidence was inconclusive. We believe, nonetheless, that – in general – the same principles we have articulated about consulting

199. Organizing Engagement, 'Spectrum of Public Participation', https://organizingengagement.org/models/spectrum-of-public-participation, accessed 31 March 2023.

with the relevant community of interest should also be followed by the Ministry of Social Development.

4.3.5 The Crown's embrace of tikanga and mātauranga Māori: is it adequate?

4.3.5.1 *What the parties said*

The claimants were highly critical of what they regarded as the Crown's lack of understanding of tikanga Māori and mātauranga Māori. Much of this focused on the Crown's use of the term 'kaupapa Māori', which the claimants argued the Crown misunderstood and misapplied. The Crown described itself as adopting kaupapa Māori approaches, for example, but counsel argued that – unless the Crown enabled Māori to design policies and structures – they would, by definition, 'not be kaupapa Māori'.[200] The MAIHI Framework, submitted counsel, could not be regarded as being kaupapa Māori 'unless it is first developed, and then implemented, managed and governed by Māori, for Māori'.[201]

Claimant counsel focused particularly on the Homelessness Action Plan, which the Crown believed would improve Māori homelessness because of the MAIHI kaupapa Māori principles 'embedded' within it. Counsel found this unconvincing, in part because of their impression that the Crown did not even understand the Māori concepts it was pinning its reliance on. Here, counsel cited the cross-examination of the Ministry of Housing and Urban Development witness Jeremy Steele, noting he had had some difficulty explaining Māori concepts and treaty principles. As counsel put it,

> it is expected, in counsel['s] view, that Mr Steele and his team, as the responsible people for leading the policy advice on preventing and reducing homelessness, have a good understanding of tikanga Māori principles, te Reo Māori and te Ao Māori. When the plan seeks to 'enable the housing aspirations of Māori', ['] develop a whānau centred approach['], 'empower Māori', and be underpinned by Kaupapa Māori principles (inter alia), counsel submit that the need for this level of understanding is paramount.[202]

The lack of understanding of fundamental tikanga principles and te Tiriti o Waitangi principles became apparent during Mr Steele's cross-examination, claimant counsel submitted. While this was not a matter of personal shortcomings, it highlighted that it is Māori who are best placed to lead a 'by Māori, for Māori' approach to homelessness, counsel argued. Not only did the cross-examination demonstrate a lack of valuing and understanding of tikanga Māori and mātauranga Māori across Crown agencies, but it also indicated the Crown's limited

200. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 29.
201. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 125.
202. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 141.

ability and capability to address the cultural, spiritual, and emotional needs of whānau Māori.[203]

Despite the Crown's claims that the Homelessness Action Plan was practically 'dedicated to kaupapa Māori principles', counsel submitted that – like the MAIHI Framework – the action plan was simply 'a Crown constructed framework operating within the legislative and policy confines of Government'. A kaupapa Māori approach would require strong Māori leadership and 'a strong understanding of tikanga Māori, Te Reo Māori, Mātauranga Māori and āhuatanga Māori [Māori tradition]'. Counsel had questioned Mr Steele about the MAIHI principles 'driving' the action plan but submitted that he had been 'unable to answer'. Counsel argued that the Crown's approach was an example of it 'manipulating the use of te Reo Māori for its own purpose'.[204]

In sum, said counsel, the claimants were 'deeply concerned at the lack of cultural competence within Crown agencies that is necessary to ensure the successful implementation of the Homelessness Action Plan and improve outcomes for Māori experiencing homelessness'. Counsel noted Mr Crisp's admission that the Ministry of Housing and Urban Development staff needed much higher levels of Māori cultural competency to achieve better Māori housing outcomes. However, counsel described the ministry's Tau Tiaki Māori Capability team and organisational strategy and '[v]oluntary attendance at wānanga kōrero on occasion' as insufficient to address 'the scale of upskilling required'.[205]

In the generic closing submissions on homelessness policy and strategy, other counsel criticised the Ministry of Social Development's strategic direction, Te Pae Tawhiti, and its Māori strategy, Te Pae Tata. Marama Edwards of the Ministry of Social Development had described these documents as finally giving some effect to the recommendations in the 1988 report on cultural racism in the Department of Social Welfare, *Puao-te-Ata-tu*, as well as the 2019 Welfare Expert Advisory Group report, *Whakamana Tāngata*. Both these reports had recommended that the ministry undergo a cultural shift aimed, as the subheading of the latter put it, at 'restoring dignity to social security in New Zealand'. Together with section 14 of the Public Service Act 2020, which requires the Crown to develop and maintain 'the capability of the public service to engage with Māori and to understand Māori perspectives', Ms Edwards regarded the two Ministry of Social Development strategies as 'scaffolding' to support the ministry's shift towards improving outcomes for Māori.[206]

According to claimants, however, this was 'too little, too late'. Moreover, said counsel, an 'obvious difficulty' with this new approach was that acquiring Māori

203. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 141.

204. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 146–147.

205. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 149–150.

206. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 158, 159, 164, 166.

cultural competency would be voluntary for Ministry of Social Development staff. Nor was there any detail available showing how the ministry would measure the uptake of its training programmes. Furthermore, the ministry's services were sometimes contracted out to third-party providers, and there was 'no requirement that a contracted organisation must be te Tiriti or Treaty compliant, . . . [or] promote and protect tikanga, te reo and tangata Māori'. Counsel argued that the Ministry of Social Development needed '[c]omprehensive change' to address Māori needs, but added that, while a transformation of its cultural capability was important, 'it is not a long-term solution to the problem of Crown intrusion into the domain of rangatiratanga'. Rangatiratanga meant 'scope for Māori to truly lead' homelessness services.[207]

Counsel were also critical of the Crown in their claimant-specific submissions. Counsel for Te Matapihi particularly disapproved of the Crown's use of te reo Māori, especially for agencies' names. Counsel noted that these names – such as Kāinga Ora and Te Tūāpapa Kura Kāinga – were not direct translations into Māori of the agencies' names in English, but rather an attempt 'to emulate the naming of a whare, with . . . those names expressing significant sentiment and aspiration'. At worst, submitted counsel, these names were 'empty grandiose sentiments giving a name to an organisation that does not deserve them, a form of re-branding that provides a new façade to an organisation that has not yet changed internally'. Counsel quoted the evidence of Ali Hamlin-Paenga, who described the Crown's use of te reo as 'cheapening' tikanga such as manaakitanga. Counsel added that the use of such concepts by Government agencies 'appears to be an exercise in decorating the veneer'.[208]

Counsel for Te Matapihi also echoed the generic claimant submissions by denouncing what he described as 'a clear lack of ability' on the part of several senior Crown officials 'to understand the depth of the concepts invoked or the importance of the concepts in te ao Māori'. Counsel described this as 'a highly troubling situation and does not reflect well on the ability of those organisations and individuals to give effect to and adopt the right approach as an organisation'. Despite the efforts of agencies to 'upskill departmental staff on te reo Māori, tikanga, matauranga Māori', added counsel, 'those changes do little to address the policy settings which dictate who gets assistance and funding and the form that it may take'. For that reason he submitted that these measures should not become 'a focal point of the inquiry'. He further submitted that, where an agency was engaging with a Māori provider, the upskilling would have to be 'very sophisticated and high level in order to be meaningful', extending into 'how the policy is shaped'.[209]

207. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 169, 173, 176, 179, 181.

208. Submission 3.3.51 (Te Matapihi closing submissions), pp 13–15; doc B8 (Ali Hamlin-Paenga), p 10).

209. Submission 3.3.51 (Te Matapihi closing submissions), pp 15–16.

In another example of the claimants criticising the Crown's use of language, counsel for Mr Dennis and Te Puea Marae submitted that the Crown used phrases like 'genuine Treaty partnership', 'by Māori for Māori', and 'put whānau at the centre' without any actual definition. They were thus mere 'buzz-words'.[210]

The Crown made no concessions about its understanding of tikanga and mātauranga Māori, but it did make further 'acknowledgements'. As Crown counsel put it in closing, 'the Crown acknowledges that to understand and support kaupapa Māori approaches, the Crown needs to strengthen its own cultural capacity and capability and grow in understanding and confidence in kaupapa Māori and Te Ao Māori'. Counsel accepted that 'some Crown witnesses could not always explain kaupapa Māori principles or give examples of how these might be implemented in the delivery of services'. The Crown 'acknowledges that it is on a learning journey', counsel submitted.[211]

However, Crown counsel added, the Crown was steadily improving its understanding. Thus, for example, 'all agencies have dedicated Māori-led teams with strong cultural competence and capacity', and these teams were available to support their colleagues 'who may not be as culturally competent' with 'advice and assistance whenever it is needed'.[212] Te Kāhui Kāinga Ora, for instance, explained to staff in the Housing Supply, Responses and Partnerships rōpū how to incorporate 'MAIHI and kaupapa Māori principles into its design and delivery of programmes'. A 'suite of initiatives' had been brought in under Te Kāhui Kāinga Ora's internal Māori capability strategy, 'Te Tautiaki', including a plan to engage and partner better with Māori and a 'Māori capability plan'.[213] Counsel submitted that 'Crown witnesses gave evidence that they are determined to build their capability and competence', and noted that the provisions of the Public Service Act 2020 now obliged public service chief executives – as quoted above – 'to develop and maintain the capability of the public service to engage with Māori and to understand Māori perspectives'.[214]

In reply submissions, counsel for Mr Dennis and others submitted that, while individual staff may be making genuine efforts to learn about Māori perspectives, 'the good intentions of individuals are inconsequential when systemic failures continue to perpetuate negative homelessness outcomes for Māori'. Counsel expressed concern that consulting with Māori-led teams could become 'a tick box exercise before proceeding on an intended course of action, regardless of the outcome of that consultation'. As to the evidence of increasing levels of Māori staff put forward by the Crown, counsel submitted that 'having more Māori staff and developing

210. Submission 3.3.46 (Hurimoana Dennis and Te Puea Memorial Marae closing submissions), p 49.
211. Submission 3.3.65 (Crown closing submissions), pp 64–65.
212. Submission 3.3.65 (Crown closing submissions), p 65.
213. Submission 3.3.65 (Crown closing submissions), pp 66–67.
214. Submission 3.3.65 (Crown closing submissions), pp 64–65.

Māori targeted plans and strategies are some of the bare minimum steps a reasonable Tiriti partner would take'.[215]

The use of Māori names by Crown agencies and documents was raised again in reply submissions. Counsel for Donna Awatere-Huata and Te Rūnanga o Kirikiriroa questioned whether the use of the term 'kāinga' was appropriate given the lack of inclusion of 'the values that are associated with kāinga'. For example, submitted counsel, 'the case has highlighted whether Kāinga Ora is even an appropriate name for a cog of the housing ministries who by dint of change of policy in the 1980's and 1990's were the architects themselves of the present housing crisis'. Counsel submitted that 'at present, kāinga and the donning of a ministry to include such a concept is at best aspirational thinking'.[216]

Counsel for Te Matapihi submitted that the Crown's suggestion in its closing submissions that the Crown's own programmes could be 'kaupapa Māori' showed that it still did not understand the concept. In fact, argued counsel, most of the Crown's submissions under this heading were more about attempts to upskill Crown officials in Māori cultural competency. The difference between kaupapa Māori and such upskilling was 'profound', said counsel, and 'needs to be better understood by the Crown'.[217] Counsel for Manurewa Marae submitted that there were 'inherent inconsistencies and conflicts within the core values of Crown institutions and tikanga and Mātauranga Māori'.[218] And counsel for Te Whānau o Waipareira Trust and the National Urban Māori Authority added that, given 'the urgency of addressing homelessness', his clients 'cannot wait while the Crown undertakes its cultural competency "learning journey"'.[219]

4.3.5.2 *Tribunal analysis*

Unfortunately, we suspect the Crown's upskilling in tikanga and mātauranga Māori is not something that can be rapidly advanced. We see this as stemming from several factors. First, as the Wai 262 Tribunal put it in 2011, when discussing te reo Māori, there remains a 'pervasive assumption that the Crown is Pākehā, English-speaking, and distinct from Māori rather than representative of them'.[220] Pockets of Government may be quicker to move beyond this mindset than others, and 'to take on more of a Māori complexion and outlook',[221] but the transformation

215. Submission 3.3.86 (claimant joint closing submissions in reply for Wai 2699 and others), pp [10]–[11].

216. Submission 3.3.85 (Donna Awatere-Huata and Te Rūnanga o Kirikiriroa submissions in reply), p [11].

217. Submission 3.3.70 (Te Matapihi submissions in reply), pp 2–3.

218. Submission 3.3.79 (Manurewa Marae submissions in reply), p 13.

219. Submission 3.3.77 (Te Whānau o Waipareira Trust and the National Urban Māori Authority closing submissions), p 13.

220. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, *Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 451.

221. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, *Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 700.

will be gradual elsewhere. Secondly, recruitment and promotion efforts have not yet resulted in a workforce that is representative of the communities that agencies work in, particularly at more senior management levels. In this context, it is inevitable that Pākehā staff will be formulating policy affecting Māori or indeed working with Māori consumers of services on the so-called 'front line'. To add to the challenges, there is competition between Crown agencies for suitable Māori staff, and those with strong skills in tikanga and mātauranga Māori are in high demand.

This does not mean that those upskilling strategies and plans that Crown agencies have developed thus far are misplaced. They are the least that the Crown should be doing, and their aspirations can only influence agency values positively. We particularly commend the changes to the Public Service Act that require a higher standard of responsiveness to Māori needs than has previously been in place. But what Crown agencies need to remain conscious of are their own limitations. There may be a danger in confusing a modicum of understanding of te ao Māori with some level of expertise, to the extent to which phrases like 'kaupapa Māori' can roll off the tongue without an appreciation of their layers of meaning, or the preconditions for their application. Māori-focused teams within agencies can assist but need to be adequately empowered; it may not be appropriate for them merely to advise colleagues on how to 'incorporate' Māori thinking into policies. In some contexts they should act as gatekeepers, ensuring policy and practice affecting Māori proceeds only when it adequately aligns with the agency's stated aspirations to improve Māori outcomes. We recall in this regard claimant counsel asking Mrs Calcott-Cribb whether Te Kāhui Kāinga Ora was a 'mana Māori response to our housing issues'; Mrs Calcott-Cribb replied that 'the mana is not, in this case, within our team.'[222]

While Crown witnesses referred repeatedly to kaupapa Māori approaches and policies, we do not believe that the Crown can describe itself as kaupapa Māori. For us, in this context, kaupapa Māori refers to policies or programmes that are conceived of within te ao Māori and are pursued under Māori authority. One action in the Department of Corrections' strategy, *Hōkai Rangi*, was to produce a working definition of kaupapa Māori. The draft definition that the department provided us articulated the concept well:

> Kaupapa Māori is a way of being, thinking and doing. It is founded upon te ao Māori and is therefore one way of describing a range of actions that express Mātauranga Māori in practice. For example, the use of te reo me ona tikanga is one expression of Mātauranga Māori. A Kaupapa Māori approach privileges a te ao Māori way of being over all others.
>
> The term Kaupapa Māori is intertwined with whakapapa (genealogy) and mana Māori (the authority and status of Māori). Therefore, it is a term that should only be used by Māori (iwi, hapū, whānau, an organisation, provider, or people) to reflect

222. Transcript 4.1.7, p 195.

their mahi. This approach supports authentic and respectful use of the term in line with its origins and its continued evolution by, for and with Māori.[223]

Where Mr Crisp described the Ministry of Housing and Urban Development as 'identifying and implementing a kaupapa Māori approach to partnership', therefore, we do not think the Crown itself can do this.[224] Likewise, Mr Steele referred to agencies' 'own kaupapa Māori approaches' that they will 'embed . . . in their responses',[225] but we think he also misapplied the term. Certainly, these uses of 'kaupapa Māori' do not square with Corrections' draft working definition.

This brings us to the use of Māori names for positions, programmes, and agencies themselves. Here the Crown risks being criticised for tokenism if it adopts such names or admonished for monoculturalism if it does not. We think there is a path to tread between these pitfalls. First, we do not think it is appropriate to use Māori names for positions or programmes that have no strong connection to Māori themselves. It may be considered 'normalising' the use of te reo Māori to do so, but in reality it causes confusion. To give a Māori name to a programme or policy that cannot be considered to be kaupapa Māori – and particularly a symbolic Māori name rather than a straight translation of an English equivalent – is misleading. For Māori-focused teams such as those led by Mrs Calcott-Cribb or Mr Pihama, by contrast, Māori names are entirely appropriate. On the bigger issue of agency names, we would be concerned if Māori names were bestowed before agencies had achieved any significant progress on addressing Māori needs or indeed were adopted independently by the agency itself, without first consulting with Māori on the appropriateness of such a move.

We accept that, on the one hand, a Māori name for an agency may inspire some staff towards an ethic of biculturalism and speaks symbolically of Māori inclusion. On the other hand, however, it may also create a misplaced sense of achievement or commitment among staff that risks diverting focus from real and effective action. We believe Mr Crisp was aware of these quandaries when choosing to adopt a Māori name for the Ministry of Housing and Urban Development, Te Tūāpapa Kura Kāinga, and we consider that he made that decision sincerely and with the best intentions. He hoped it would draw the ministry towards becoming an entity where 'working with and for Māori' was 'part of our DNA'.[226] However, we can understand why claimants may consider it a premature 'branding' exercise at a time when disparities in housing outcomes for Māori were significant and rising.

In this report we have had to make our own choice about whether to refer to agencies like the Ministry of Housing and Urban Development by their Māori names. Given the claimant sentiment on the matter, and some of the principles we have outlined above, we have chosen not to. We do not intend this as a slight

223. Document D9(e) (Topia Rameka appendices), p [5].
224. Document D1 (Andrew Crisp), p 20.
225. Document D7 (Jeremy Steele), p 16.
226. Document D1 (Andrew Crisp), p 5; transcript 4.1.7, pp 206–208.

on the agencies concerned, but we are sufficiently conscious of the sensitivities involved to act with circumspection.

4.3.6 Is there adequate coordination among Crown agencies?

4.3.6.1 *What the parties said*

In their generic closing submission, claimant counsel noted Crown discovery documents which showed Housing New Zealand called for a coordinated approach to homelessness in 2009.[227] As the General Manager of Strategy, Policy, Research and Evaluation at Housing New Zealand, Judy Glackin, said at the time: 'The necessity for a coordinated national approach is being signalled through the increased media attention, calls for national leadership on homelessness from local government and advocacy groups, and the concerns from Government agencies.'[228] Counsel submitted that the need for a coordinated approach was again emphasised seven years later in the Cross-Party Inquiry into Homelessness (discussed in section 2.5.3 of chapter 2). But, they argued, requests for a national response were not limited to these examples as the 'existence of homelessness within our communities was well known by the Crown'. They said it was not until 2019 that the Crown started to develop a national homelessness plan.[229]

Counsel submitted that the three main Crown agencies dealing with homelessness, Kāinga Ora, the Ministry of Housing and Urban Development, and the Ministry of Social Development, purport to work together. '[Y]et this connectivity is non-existent. Providers and those with lived experience of homelessness are forced to navigate a convoluted system of three agencies who appear on the surface to all deal with housing, but are distinct with different roles and purposes and do not communicate with each other'.[230] Counsel said the ongoing need to navigate the system was a 'significant and prejudicial barrier to receiving assistance'.[231] Witness Whitiao Paul, of Te Puea Marae, told us that Kāinga Ora and the Ministry of Social Development have different policies and different programmes. 'I don't think they communicate enough. MSD will say that an issue is Kainga Ora's fault, while Kainga Ora will say the issue is MSD's fault.'[232]

Several claimant-specific closing submissions raised concerns about the uncoordinated nature of the housing system for those with complex needs experiencing homelessness. Claimant counsel representing 11 claimants outlined Crown policy

227. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 138.

228. Document B98(e) (claimant bundle of Crown documents, vol 5), p 2735 (submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 139).

229. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 139.

230. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 132.

231. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 133.

232. Document B83 (Whitiao Paul), p 8.

failures relating to people experiencing both homelessness and mental health issues. Counsel said:

> The Crown has arranged for the provision of social services to be spread throughout multiple Crown agencies which are often disconnected and disjointed. For people affected by mental health and housing deprivation, the agencies that the current system expects them to engage with include the MHUD, MSD, MOH, Kainga Ora, WINZ, DHBs, CHPS, and with private and public health service providers available in each specific region.

This approach, they said, did not work for those with mental health issues.[233] They argued further that disconnected systems were difficult for people to navigate as 'lines between which services are provided by which agency and how to access them are not clear'.[234] This resulted in people with mental health issues being given 'inappropriate accommodation', such as a motel, with little privacy or ability to establish a normal routine.[235]

Counsel representing several other claimants raised further concerns about the disjointed system for people experiencing complex needs in his joint closing submissions (for two claims). He said the Crown had breached the Treaty by having 'no single government department that has a statutory responsibility for homeless people or for coordinating services'. He argued that service provision was developed in a 'disconnected manner, alongside private charities, faith based social services and government agencies such as but not limited to MSD, HNZC, and District Health Boards which are involved in addressing the complex needs of homeless people'.[236]

One solution Mr Dennis offered during cross-examination was that Mrs Calcott-Cribb 'needs a bigger bat'. This, he said, 'means end-to-end from emergency housing all the way through to papa kāinga. There needs to be more Māori leadership and lens across the whole pipeline. At the moment it's all vertical'. He went on to say that too many agencies were involved in addressing the same problem. This was demonstrated in Tāmaki Makaurau, where three plans to address homelessness were in place – the Homelessness Action Plan (owned by multiple Government agencies), the Kia Whai Kāinga Tātou Plan (Auckland Council), and the Kāinga Strategic Action Plan (Independent Māori Statutory Board) – when only one was needed.[237] Mr Dennis went on to say that the housing system was creating problems and not allowing people who needed the help to get it.[238] The co-location approach used by Te Puea Marae (see section 2.5.1 of chapter 2) meant that employees from the Ministry of Social Development and Kāinga Ora, a social

233. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 80.
234. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 81.
235. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 82.
236. Submission 3.3.49, (claimant closing submissions for Wai 2257 and Wai 120), pp [4]–[5].
237. Transcript 4.1.5, pp 53–54.
238. Transcript 4.1.5, p 58.

worker, and a budgeter were all present one day a week, enabling them to make decisions that assisted whānau. But, Mr Dennis commented, 'we had to push for all of that stuff'.[239]

In closing submissions, the Crown agreed that addressing homelessness required a 'concerted Crown effort toward change across all components of the housing system'. This, counsel said, 'has meant changes to leadership and institutional structure. The Crown had to, in effect, get its own house in order.'[240] Crown counsel argued that the establishment of Kāinga Ora, the Ministry of Housing and Urban Development, the Associate Minister of Housing and Urban Development (Māori Housing) portfolio, and the enactment of the Kāinga Ora – Homes and Communities Act 2019 were significant developments that had 'strengthened leadership' and signalled change. She submitted that the ministry's establishment resulted in 'significant policy and structural advances' that were more cohesive than 'historical ad-hoc responses'.[241]

The Crown argued that 'increasing progress' had been made across Crown agencies 'to drive better coordination and cohesiveness across work programmes'.[242] Crown counsel submitted:

> A more cohesive, coordinated and eco-system development approach is being taken to make the provision of housing more responsive, holistic and sustainable. A clear and determined focus on positive housing outcomes for Māori and tangible impacts across the system will be at the forefront.[243]

She said that one way the Crown had implemented change was by establishing Te Kāhui Kāinga Ora in 2018 – a dedicated Māori Housing Unit within the Ministry of Housing and Urban Development.[244] Before Te Kāhui Kāinga Ora's establishment, Crown counsel argued, Māori housing outcomes had been spread across multiple Crown agencies. During cross-examination, Ms Edwards admitted that there had been a similar lack of leadership on Māori issues at the Ministry of Social Development before the advent of *Te Pae Tata – Māori Strategy and Action Plan* (2018). She recalled that 'everyone was accountable for ensuring that there were better outcomes for Māori but without [some coordinated focus], . . . some things tended to . . . drift'.[245] Crown counsel agreed that there was no 'specific end-to-end agency that had responsibility for bringing together all components of Māori housing, nor for the partnerships required to deliver that'.[246]

239. Transcript 4.1.5, p 58.
240. Submission 3.3.65 (Crown closing submissions), p 40.
241. Submission 3.3.65 (Crown closing submissions), pp 40–41.
242. Submission 3.3.65 (Crown closing submissions), p 46.
243. Memorandum 3.1.165 (Crown memorandum), p 17 (submission 3.3.65 (Crown closing submissions), p 40).
244. Submission 3.3.65 (Crown closing submissions), p 41.
245. Transcript 4.1.7, p 315.
246. Submission 3.3.65 (Crown closing submissions), p 41.

Crown counsel noted that the Homelessness Action Plan (2020) was the first 'coordinated, All of Government response to homelessness.'[247] MAIHI, she said, sat across multiple agencies including the Ministry of Housing and Urban Development and Kāinga Ora, and the housing units within Te Puni Kōkiri and the Ministry of Social Development. This brought their 'respective roles and responsibilities together to deliver interventions that connect across the housing system.'[248] Crown counsel submitted that, while the Crown believed its national level policy coordination was improving, this leadership needed to be translated 'to improved experiences for those who seek support'. Counsel argued that MAIHI was a way of delivering this.[249] As Mrs Calcott-Cribb put it, MAIHI brought multiple agencies together 'to ensure that there is "no wrong door" in government for Māori and Iwi to advance housing solutions'.[250] The Crown also recognised there was a need to build capability and capacity of the frontline workforce dealing with homelessness and that 'coordination and information-sharing between government agencies and providers could be stronger'.[251]

Despite such emphasis on coordination, Mrs Calcott-Cribb effectively conceded that roles could overlap. We asked her whether her team, Te Kāhui Kāinga Ora, and the Māori-focused team at Kāinga Ora, Te Kurutao, were 'getting in each other's way', since both had responsibilities to build partnerships with Māori communities. She said that Te Kurutao was a more 'face-to-face' unit, and part of a Crown entity with a distinct legislative mandate, while Te Kāhui Kāinga Ora, by contrast, was 'responsible as the Crown for the relationship'. But then she added:

> With my tungāne Te Ariki [Pihama], we talk and we walk together and we look at how we are working, where we're working and we bring our teams together, even with Te Puni Kōkiri. I can't tell you that there hasn't been competition or it felt a bit competitive, because there has.[252]

When we asked Mr Pihama about this he said that 'professional tension is a good thing, it enables us to hold each other accountable, which is something that iwi quite often demand, and rightly so, from Government agencies'. He predicted that, as the two agencies matured, their cross-agency collaboration would develop.[253]

In reply submissions on generic and claimant-specific issues, counsel raised further concerns about people navigating services and experiencing both homelessness and mental health issues. They said that, while the Crown had claimed in its closing submissions that it was working on making 'its disjointed and disconnected system more cohesive', the experience for those using the system was

247. Submission 3.3.65 (Crown closing submissions), p 42.
248. Submission 3.3.65 (Crown closing submissions), p 46.
249. Submission 3.3.65 (Crown closing submissions), pp 47–48.
250. Document D6 (Kararaina Calcott-Cribb), p 14.
251. Submission 3.3.65 (Crown closing submissions), p 84.
252. Transcript 4.1.7, p 235.
253. Transcript 4.1.7, p 611.

'still disjointed and disconnected, navigating multiple Crown agencies'. Speaking specifically of people experiencing mental health issues and homelessness, counsel argued that neither MAIHI nor the Homelessness Action Plan has had any impact on how hard it is for them to access Crown services. They stated that, although the Ministry of Health was consulted on the development of MAIHI, no funding had been put forward to streamline service access.[254]

4.3.6.2 *Tribunal analysis*

As the Crown itself has recognised, the success of Crown agencies in addressing homelessness will depend significantly upon their coordination and cooperation. If any of the agencies has its own agenda, or undermines the Crown's 'no wrong door' approach, then the outcomes for those in need of housing will inevitably be worse. Once again, the Tribunal's Wai 262 report provides useful guidance, even if the Tribunal was writing in the context of the many Crown agencies dealing with mātauranga Māori. Noting that there were 'a number of different agencies making policy, or delivering programmes, or funding', the Tribunal stated that coordination needed to go beyond mere information-sharing. Instead, each agency's 'objectives in allocating funding should be in synch' with those of other agencies. Sharing 'a vision and strategy', said the Tribunal, was 'simply sensible government'. The Tribunal considered that an agency was needed to lead on strategy 'whose mandate gives it natural oversight of the issues'.[255]

It seems fairly apparent that the Crown is still grappling to internally coordinate its response to homelessness, in part no doubt because it is only in recent years that it has really begun to act on the problem. We trust that the Crown's new strategies and policies will allow for greater unity of action and purpose going forward, and we believe that the Ministry of Housing and Urban Development has the mandate to lead, despite its relative newness. However, we are well aware that large bureaucracies take time to steer in new directions, and that there will continue to be inconsistencies in approach between the likes of Kāinga Ora and the Ministry of Social Development. In this regard, we can well understand why, from a Māori perspective, the divide between the provider of state housing and the agency that assesses housing need may seem perplexing. The claimants' desire for a more seamless and holistic arrangement is what drew many to call for a new Māori housing authority (which we discuss below). Indeed, the claimants themselves have pioneered successful new approaches to addressing the Crown's internal coordination, such as the co-location model developed at Te Puea Marae.

In sum, the Crown's emphasis on the need for greater coordination across agencies to address homelessness is essentially a concession that its response has previously been inadequate. Mr Crisp himself explained that the purpose of the MAIHI Framework was to 'attend to congestion within the system, critical

254. Submission 3.3.75 (claimant generic and specific submissions in reply), p 17.

255. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, *Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 578.

barriers and missing enablers that undermine Māori and iwi housing needs and aspirations.'[256] The existence of these problems tells us that the Crown has been in breach of the principle of good government for at least the majority of the period our inquiry focuses on. For the reasons we have set out above, with respect to the potential of the Crown's latest policies and strategies, we are not currently in a position to determine whether the Crown's 'no wrong door' (often expressed as 'one door') approach has led to treaty compliance. We note in any event that Mr Crisp acknowledged that it was a 'big job' to 'find a better way' to remove 'the fragmentation . . . [that] whānau have to deal with.'[257]

4.3.7 Is Kāinga Ora's role and mandate adequate to address homelessness?

4.3.7.1 *What the parties said*

Some claimants were critical of what they saw as the limited role that Kāinga Ora played in the Crown's attempts to alleviate homelessness. Counsel for Vanessa Kururangi questioned Kāinga Ora chief executive Andrew McKenzie about this at length. Mr McKenzie explained that Kāinga Ora received its main income from rents, most of which were income-related rent subsidies. It used the value of its assets to borrow money to renew its ageing housing stock, and build new housing (while selling land in other locations), with the rental income stream funding its operational expenses and servicing the interest on its debt. At the time of our hearings it was regenerating five suburban areas in Auckland and one in Porirua. It was asked by the Government in 2018 to provide 70 per cent of the 6,400 new income-related rent subsidies places the Government funded through Budget 2018 (with the rest to be provided by the community housing providers, as we noted in section 2.6.1), so – in claimant counsel's submission – its most direct contribution to reducing the social housing waiting list is effectively to deliver the Government's Public Housing Plan. Mr McKenzie added that Kāinga Ora also worked with its tenants to stop them falling into homelessness.[258]

Claimant counsel argued that Kāinga Ora was 'not provided with any wider objectives, such as to attempt to meet the demand for public housing or build the supply up to socially desirable levels'. It did not receive any money directly from the Crown to build public housing. To address the level of Māori homelessness, counsel submitted that the Crown would need to give Kāinga Ora 'the directions and resources to significantly step up the number of social housing places it provides.'[259] In generic closing submissions, counsel added that 'the central government actually investing some of its own funds in state housing would be well justified.'[260] Counsel was critical of the Crown's effective decision in its 2018 Public

256. Document D1 (Andrew Crisp), p 58.
257. Transcript 4.1.7, p 42.
258. Transcript 4.1.7, pp 526, 533, 540; submission 3.3.56 (Vanessa Kururangi closing submissions), pp 11–12.
259. Submission 3.3.56 (Vanessa Kururangi closing submissions), pp 12, 17.
260. Submission 3.3.35 (claimant generic closing submissions on homelessness strategy and policy), p 200.

Housing Plan to maintain social housing at 3.6 per cent of the national stock rather than seek to build back to the level of 5.4 per cent that existed in 1991.[261]

The Crown dedicated considerable space to defending Kāinga Ora in its closing submissions. It conceded that Housing New Zealand and Kāinga Ora had no Māori-focused strategy from 2010–2020, and that the entity's engagement with Māori over this period was 'ad hoc', as Mr McKenzie had acknowledged. However, Crown counsel added that the Kāinga Ora–Homes and Communities Act 2019, the Government Policy Statement on Housing and Urban Development, the Crown's letters of expectation, the creation of Te Kurutao, Kāinga Ora's new Māori strategy (effective from November 2021), as well as the guiding influence of the MAIHI Framework, all meant that Kāinga Ora had 'come a long way'.[262]

Here, the Crown did not really engage with the points made by counsel for Vanessa Kururangi: that Kāinga Ora did not respond to housing register numbers specifically but to the number of income-related rent subsidies places the Government asks it to fund each year, and that for the most part (beyond the budget allocation for social housing places) Kāinga Ora does not receive money from the Government directly. It funds its expenditure through a combination of selling some properties, receiving income-related rent subsidies payments, and borrowing. Claimant counsel submitted in reply that it was 'a matter of serious concern' that the Crown had 'not even attempted to contest' the submission that the proportion of State houses within the total housing stock was significantly lower than in the early 1990s. He argued:

> Maori have historically relied on social housing for housing support and this reliance has increased with the recent housing affordability crisis. The central government's failure to increase the social housing supply to meet this heightened need by Maori is in breach of Article 2 and 3 Te Tiriti obligations and has directly resulted in significant numbers of Maori being homeless.[263]

Claimant counsel acknowledged that there were new expectations for Kāinga Ora to act in a manner consistent with treaty principles, but 'any efforts made by Kainga Ora in this regard are limited by the need for Kainga Ora to itself obtain a financial return out of any involvement with Maori housing'.[264]

4.3.7.2 *Tribunal analysis*

We believe that Kāinga Ora's role is best addressed in our main report. The way it operates, and how this has changed over time, is clearly a matter of some complexity. We are, after all, to hear specific commissioned evidence on Māori and social housing since 1991. That said, we are naturally concerned that the proportion of

261. Submission 3.3.35 (claimant generic closing submissions on homelessness strategy and policy), pp 83, 195.
262. Submission 3.3.65 (Crown closing submissions), pp 20, 68, 92–96.
263. Submission 3.3.82 (Vanessa Kururangi submissions in reply), p 3.
264. Submission 3.3.82 (Vanessa Kururangi submissions in reply), p 3.

the total housing stock that is social housing has declined so much since 1991, and assume that this has contributed to the rates of homelessness and the size of the register we see today. As such, we indicate the Crown may well have breached the principles of equity and active protection by effectively replacing the role of the State to such an extent with rent subsidies for use in either the private or the public sector. We say this because the evidence is clear that Māori have traditionally been highly dependent on the State for housing. Again, these are matters for a later report. We are also conscious of the fact that Kāinga Ora's establishment legislation and the other developments cited by Crown counsel were all essentially new or very recent at the time our hearings closed. In accordance with what we have set out earlier, we are not in a position to assess them yet. For the purposes of this stage one report they essentially remain intentions at this stage, and it remains to be seen how they transition into action.

4.3.8 Is the Ministry of Social Development's culture adequately addressing the needs of homeless Māori?

4.3.8.1 *What the parties said*

A number of claimant witnesses expressed frustration with the Ministry of Social Development, which of course makes decisions about placement on the housing register and the provision of the emergency housing special needs grant. They argued that the ministry's assessment process was too rushed and left no opportunity for case managers to build any relationship of trust with Māori clients. The rules, they said, were applied too rigidly, and case managers were also difficult to contact. Moreover, they said, ministry staff did not treat clients respectfully and made minimal efforts to be of assistance. In some cases, this even amounted to contempt. According to Lorna Payne, a social worker at Te Puea Marae:

> I korerohia mai e nga whanau he pehea te ahua o [Work and Income] kia ratou. Ka korero pono mai nga whanau. Ko ta ratou kii mai, kaore nga kaimahi a [Work and Income] i manaaki popore i a ratou. Ko te ia o a ratou korero he whakahawea, he whakaiti tangata. Kaore au i te mohio, me nga ko nga Maori anake te hunga i whakahaweatia e ratou o [Work and Income].
>
> We were told by families how they are treated at [Work and Income]. The whanau will tell the truth. They talk about how poorly the staff at [Work and Income] treat them, how they talk down to them and put them down. Ka whakaiti tangata; they are degraded and made to feel small. Whether they just do it to Maori, I don't know.[265]

Sharon Isaac-Penetito, a manager of emergency accommodation, told us that many of the ministry's case managers she had dealt with 'think of their clients as a just a number, or have trouble perceiving their clients as an actual person in a desperate and difficult situation. I think this is because many of these case

265. Document B71 (Lorna Payne), p14.

managers have never actually met their clients.' As far as she could tell, dealing with their clients was 'only a box-ticking exercise to the case managers'.[266] Counsel for Te Puea Marae submitted that it was not clear whether such problems were 'a result of poor staff training, understaffing or time restrictions', but contended that they amounted to 'a systemic failure on the part of MSD which directly contributes to poor Māori housing outcomes and the reluctance of whānau to engage with Crown agencies'.[267]

The claimant position here aligned with academic work by Mohi Rua, Shiloh Groot, and others that described a kind of 'penal welfare' experience for Māori beneficiaries in New Zealand, with 'dehumanising and demoralising interactions' in 'physically punitive environments': 'Interactions with staff are described as being laden with coercion, monitoring, denial of entitlements, sanctions, blaming, hostility, humiliation, minimisation of legitimate concerns and high levels of intrusion when seeking legitimate help.'[268]

To further corroborate their arguments, the claimants pointed to the Welfare Expert Advisory Group's 2019 report, *Whakamana Tāngata* (mentioned in section 4.3.5 of this chapter). As we have set out, that report recommended that welfare recipients be treated with respect and dignity and that the Ministry of Social Development undergo a cultural transformation to achieve this. It also pointed to a number of damaging and ineffective sanctions in welfare legislation. In particular, the claimants noted the report's finding that 'the failures of the welfare system disproportionately affect Māori', and its recommendation that the system be realigned with Māori values.[269]

The Crown had apparently not expected the strength of claimant feeling about the performance of the Ministry of Social Development. Mr Ablett-Hampson admitted he had not anticipated it and felt compelled to submit a supplementary brief of evidence setting out the daily working routines of frontline ministry staff. He prefaced the oral presentation of his evidence with the following apology: 'Every day our people help thousands of New Zealanders to be safe, strong and independent. But we are human, and to those who feel we have failed you, I apologise.'[270] He 'accepted' the academic evidence mentioned above, but maintained that in his six years of working for the ministry and travelling around its offices he had 'never encountered . . . one of [our] case managers who didn't care about their clients, who thought they were a number'.[271] The ministry's Waikato regional commissioner, Te Rehia Papesch, also asserted:

266. Document B60 (Sharon Isaac-Penetito), pp 3–4.
267. Submission 3.3.46 (Hurimoana Dennis and Te Puea Memorial Marae closing submissions), p 30.
268. Document B86(a) (Mohi Rua et al, 'Precariat Māori Households Today', Ngā Pae o Te Māramatanga, Te Arotahi Series Paper, May 2019, no 2), p 6.
269. Submission 3.3.35 (claimant generic closing submissions on homelessness strategy and policy), pp 166–167; see also doc B98(i) (claimant bundle of Crown documents, vol 9), p 2144.
270. Transcript 4.1.7, pp 285, 426.
271. Transcript 4.1.7, pp 371, 426.

> We all join the Ministry of Social Development because we want to help. Bottom line. Every one of us joined the organisation because we want to help, we want to make it a better world for this country and for the people in New Zealand. I have never ever come across any of my staff feeling that their client is just a number at all. Never in my whole career.[272]

As we have noted at section 4.3.5, Ms Edwards was confident that the ministry's strategies, Te Pae Tata and Te Pae Tawhiti, were 'starting to bring about the vision and recommendations contained in *Pūao-Te-Ata-Tū* and referred to in *Whakamana Tāngata*'. She said that the lack of progress in the past had been partly because of the 'many changes in Government priorities and also within agency leadership'. Despite what she and others heralded as a new commitment, she acknowledged that 'we still have some way to go and it will take time to achieve the outcomes we are looking for as MSD, and the Crown'.[273]

In closing submissions, Crown counsel also accepted that, while '[e]very person engaging with the Crown should be treated with dignity', the Crown 'doesn't always get this right'. Counsel added that the Crown's participation in the inquiry had 'provided cause to reflect on many elements of its housing practice and to build that into its forward work programme'. The ministry would, for example, take 'the knowledge of the perspectives of the lived experiences of claimants into its broader welfare reform work'. The Crown did dispute, however, the suggestion that the initial assessment with a case manager was only 15 minutes long. On the basis of Mr Ablett-Hampson's evidence, counsel submitted that there was no such time limit. With regard to what the claimants saw as the Crown's failure to support those in dire housing need, she stated that the ministry was already 'in the process of ensuring that every household living in emergency housing has a dedicated case manager'. Other actions it would take included increasing the co-location of services at marae.[274]

We note that the claimants were unimpressed by the Crown's commitment to learn from the negative experiences described in their evidence. Claimant counsel submitted that officials seemed to regard these instances as 'learning experiences for MSD'. Counsel argued that this could be of little comfort to 'the whānau who experienced stress, humiliation, and a loss of trust, as a result of that poor service'.[275] In reply submissions, the claimants also maintained that the housing assessment interview undertaken by the Ministry of Social Development was brief, and that the 'overwhelming' feedback from claimants was that they found this process 'rushed'. Even if Mr Ablett-Hampson was right, submitted claimant counsel, a

272. Transcript 4.1.7, p 371.
273. Transcript 4.1.7, pp 272, 307.
274. Submission 3.3.65 (Crown closing submissions), pp 49–50.
275. Submission 3.3.35 (claimant generic closing submissions on homelessness strategy and policy), p 57.

half-hour interview would be scarcely enough to initiate a proper investigation into a client's situation.'[276]

4.3.8.2 *Tribunal analysis*

Ministry of Social Development staff tended to describe the poor service delivered to certain clients as 'mistakes'. In light of the pattern of failure set out in the evidence – and indeed referred to in past reports such as *Puao-te-Ata-tu* in 1988 and *Whakamana Tāngata* in 2019 – we do not find this an adequate explanation. The Crown itself said it was committed to implementing the recommendations in *Whakamana Tāngata*, which speak of the need for a cultural transformation within the ministry. Clearly, therefore, the problem is more entrenched than mere errors. It may be that the ministry is simply struggling with the pressure to address the escalating numbers of applicants seeking housing assistance in recent years, but we do not have sufficient evidence to know the extent to which a lack of resources is to blame.

What we can say, though, is that the Crown's proposition that the recommendations set out in *Puao-te-Ata-tu* may now at last be able to be put into effect is in fact a Crown concession of its long-term failure to reform the welfare system in order to improve outcomes for Māori. Indeed, we note that the Crown has in fact already made such an admission in the recent Tribunal inquiry into Oranga Tamariki.[277] While our period begins only in 2009, we find that the steadfast and systemic failure in this regard over such a long period is at minimum a breach of the principle of good government. Furthermore, while there is a clear commitment to acting on *Whakamana Tāngata* within the Ministry of Social Development, it concerns us that it took our priority inquiry for ministry officials to become aware of the extent to which their clients were feeling belittled and unsupported by the system. We appreciate the willingness of the ministry's witnesses to put matters right, including by encouraging claimants to seek reviews of adverse decisions, but we observe that the ministry may need to audit its own services more effectively.

4.4 Homelessness Issues Affecting Specific Groups

4.4.1 Rural issues and whenua Māori

4.4.1.1 *What the parties said*

The prevalence of inadequate housing and homelessness on Māori-owned land (and in rural locations more generally) raises further questions about what obligations the Crown has to protect or restore 'kāinga'. Claimant counsel in their generic closing submissions dealt with this subject. Counsel submitted that there were

276. Submission 3.3.86 (claimant joint closing submissions in reply for Wai 2699 and others), p [15].

277. Waitangi Tribunal, *He Pāharakeke, he Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry* (Lower Hutt: Legislation Direct, 2021), p 95.

many barriers to Māori returning to rural communities. These included the lack of employment opportunities, the scarcity and cost of rental accommodation, the lack of public transport, the 'excessive connection charges and line charges', and more. Given these many barriers, counsel submitted that 'the very act of choosing to live in a rural community is weighted heavily against Māori which adds a chink in the already very thin armour that many Māori adorn to protect them from the threat of homelessness.'[278]

Overall, said counsel, successive governments had 'implemented an ad hoc approach' to issues facing rural Māori communities in the period covered by the inquiry. Changes in Government had led to breaks in continuity and focus, and Māori aspirations to exercise rangatiratanga were constantly 'at the whim of Crown policy'. As an example, counsel cited the Rural Housing Programme, which was introduced in 2001 to repair rural Māori homes and to build new community-owned ones. It ended in 2011 'with no consultation with communities or Iwi and Service Providers'. Other funds that could be used to provide social housing on Māori-owned land ended in 2015. In 2017, a programme called Te Ara Mauwhare was established to help those whānau on lower incomes achieve home ownership, but it was only funded until 2021. While the Māori Housing Network (established in 2015 in response to the 2011 Auditor-General's report on Government support for building on Māori-owned land) was still in operation, counsel submitted that 'investment in the building of social housing on Māori land requires a long term view that goes beyond election cycles and provides an opportunity for Māori.'[279]

Counsel noted that most rural areas are classified as limited employment locations, meaning that – because of the scarcity of local work opportunities – people cannot move to them and receive the unemployment benefit. The claimants argued that the need to be available for work was thus prioritised over being able to live close to support networks. It meant that people were encouraged to apply for housing assistance in any part of the country, regardless of where they had whānau living or where they had connections to the whenua. During hearings, Ricky Houghton of He Korowai Trust criticised the limited employment locations policy, saying:

> We've got homeless whānau down here in Auckland, that are homeless that should be back home. Should we be able to reconnect our umbilical cord back to their whenua, back to their whare, back to their whānau, back to their future and get on with their lives. But they can't go back.[280]

Mr Houghton explained that the limited employment locations zone he was referring to stretched 60 kilometres from Houhora to Cape Reinga.[281]

278. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 73, 74.
279. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 76–79.
280. Transcript 4.1.5, pp 587–588.
281. Transcript 4.1.5, p 587.

Counsel noted that Ministry of Social Development witness Edward Ablett-Hampson had said that distance from support networks should be regarded as sufficient grounds for declining the offer of a Kāinga Ora property (and thus not being removed from the housing register). However, counsel pointed out Mr Ablett-Hampson's acknowledgement that proximity to whenua or iwi 'is not given explicit weighting when determining the household's eligibility for public housing or their priority on the housing register'.[282] Counsel submitted that it was clear that, 'to the Crown, one's whenua and iwi are not considered social support networks'.[283]

Claimant counsel was critical of the Kāinga Whenua loans scheme, which was introduced in 2010 to support building on whenua Māori. While acknowledging the scheme was a potential 'stepping stone' to building on Māori-owned land, counsel said it is 'severely underutilised' because the lending criteria are too challenging and the infrastructure requirements are too burdensome (to say nothing of the difficulties of obtaining a licence to occupy and having reasonable access). Counsel submitted that the inability of most would-be recipients to meet standard bank lending criteria arguably rendered the scheme 'obsolete'. The challenges of 'overcoming multiple ownership and tenure issues', said counsel, showed that Māori homelessness could not be improved simply by providing loans for building on whenua Māori.[284] More generally, counsel denied that recent changes to Te Ture Whenua Maori Act 1993 had made it easier for whānau to build on their whenua.[285]

Counsel also raised a range of broader issues. These included the historical lack of local government support for housing on Māori land (which they attributed to a lack of Māori representation on councils, rating costs,[286] and zoning rules, as well as a council failure to provide 'redress for the past history of planning decisions'); the sheer expense of the Resource Management Act process (and the ability of councils to sidestep the Crown's treaty responsibilities); and the comparative expense of building in rural locations.[287] Counsel further submitted that there was a significant shortfall in the funding available to repair rural Māori homes compared to the demand, insufficient funding for infrastructure, and a lack of suitable land for larger papakāinga developments. Counsel was critical of what they saw

282. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 81; see also doc D20 (Edward Ablett-Hampson and Alexander McKenzie), p 22.

283. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 82.

284. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 92–94.

285. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 98.

286. A specific example of rating unfairness cited by counsel was the fact that the local council charges rates for each house on the Ngāi Tamatea papakāinga in the Waiotahe Valley, despite all houses being on a single title and the council providing no services such as water supply or rubbish collection: submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 102.

287. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 99–106.

as Te Puni Kōkiri's inefficiency and internal dysfunction, the absence of its own homelessness strategy, as well as what counsel argued was its relatively minor standing among agencies dealing with housing issues.[288]

Some claim-specific submissions highlighted personal experiences of rural homelessness, particularly in Northland. Counsel for Ngāti Hine and Te Kapotai drew attention to claimant accounts of whānau living in precarious circumstances on the whenua. One example, from the evidence of Phillipa Reti, concerned a family of five who had returned to Waikare due to severe household overcrowding and were living in tents by the river. The best this family could hope for was obtaining a portable cabin by the onset of winter. Others live in huts and sheds, which Delaraine Armstrong described in the vignette about housing conditions in Te Tai Tokerau (see section 2.9.3) as 'the lowest level of what a human being could tolerate'. Others returned to family homes that had been uninhabited for some time, with leaking roofs and overflowing septic tanks. While the Crown had been aware of these issues for many years, counsel submitted, it had not developed adequate policies to address them.[289] Te Hikutu claimants from Whirinaki in Hokianga showed us photographs of whānau living in makeshift dwellings, tents, or cars, and cooking over open fires.[290]

Other claimants spoke of how they and their communities were affected by the inequitable distribution of Crown resources intended to combat homelessness; again, Northland was a particular area of concern. Te Hikutu claimants argued that little Crown assistance ever made it as far north as Hokianga. Lynette Wharerau said a policy would be made in Wellington that 'looks fantastic', 'but by the time it reaches the harbour bridge, . . . 80% of that is gone in terms of capacity and resourcing. It comes further north, hits Whangārei, and is dispersed there'. Only 'the dregs' reached Kaikohe, and basically nothing beyond that point.[291] Ricky Houghton of He Korowai Trust echoed this, arguing that the Crown was actively neglecting Northland in its homelessness response. Crown agencies, he said, 'have just run away and left the North hanging out to dry'. Instead, he contended, the Government's focus was on 'big' centres such as Auckland, Tauranga, Queenstown, and elsewhere. What Mr Houghton asked for was 'equitable distribution of housing resourcing towards Northland Maori housing' (see also He Korowai Trust vignette in section 2.9.7).[292]

When it came to rural issues and whenua Māori, the Crown acknowledged there were problems but fell short of making a concession. As Crown counsel put it in closing:

288. Submission 3.3.35 (claimant generic closing submissions s on homelessness policy and strategy), pp 106–108.
289. Submission 3.3.39 (claimant joint closing submissions for Wai 1464 and others), pp 58–59, 65–66, 68, 69–70.
290. Document B93(b) (Anania Wikaira).
291. Transcript 4.1.6, p 641.
292. Document B89 (Ricky Houghton), pp 7, 13, 16.

> The Crown acknowledges that, particularly because of the COVID-19 pandemic, and despite being raised in urban areas, many whānau are returning to their tūrangawaewae in rural and provincial areas seeking housing refuge due to limited available supply and/or cost demands in the larger centres. Iwi and hapū want to provide support to their returning tribal members but struggle with the increase in demand and the levels of bureaucracy in the housing sector at both national and local levels, to swiftly respond including by using their own land and housing models.
>
> Issues relating to barriers preventing those wanting to return to their tūrangawaewae include the lack of grants to build houses on whenua Māori; barriers to accessing finance; lack of resourcing for Māori housing providers to deliver culturally appropriate housing, and lack of infrastructure to landlocked (or partially landlocked) blocks.[293]

Crown counsel submitted that the Crown was working to overcome these barriers through initiatives such as the work of the Māori Housing Network, the Whenua Māori programme, and amendments to Te Ture Whenua Maori Act and the Local Government (Rating) Act. Counsel said that it would 'take time to assess the full impact these legislative changes will have on Māori capacity to build on their own land'. She added that phase two of *MAIHI Ka Ora* would set out a deliberate approach for implementation and Te Puni Kōkiri would 'continue to monitor the impact'.[294]

As the Crown's closing submissions did not engage with the claimants' concerns about the limited employment locations policy, we asked the Crown 'whether this policy required review in light of the experiences of whānau Māori who are ineligible for a receipt of a benefit when returning to their rural papakāinga'.[295] The Crown responded that it had no plans for such a review. Crown counsel reiterated the evidence of Mr Ablett-Hampson that 'this policy and operational guidance for staff anticipates that clients planning to move to rural papakāinga for cultural reasons should be assisted as appropriate to work out whether, and how, they can meet their work obligations in that location'.[296]

In reply, counsel for Mr Houghton did not raise the limited employment locations policy but noted the Crown's closing submissions were silent on what Mr Houghton had described as the lack of funding for Northland. Counsel submitted that this omission was 'concerning'. He noted that the Crown's closing submission had mentioned funding it had provided to He Korowai Trust, but he submitted that the sums referred to had been 'merely a drop in the bucket in the midst of Northland's deep need for funding and support'.[297] Counsel for Ngāti Hine and Te Kapotai also criticised the Crown for its failure 'to substantively address and respond to the claimants' evidence and submissions around the particular circum-

293. Submission 3.3.65 (Crown closing submissions), p 89.
294. Submission 3.3.65 (Crown closing submissions), p 91.
295. Memorandum 2.6.20, p 6.
296. Submission 3.3.65(d) (Crown responses), p 5.
297. Submission 3.3.68 (Ricky Houghton submissions in reply), pp 6–8.

stances of homelessness in Te Tai Tokerau'. The region remained a 'blind spot' for the Crown both 'generally and in terms of housing'.[298]

Counsel for Patuharakeke similarly criticised the Crown's lack of attention to the specific deficiencies the claimants had identified in the Crown's policies for utilising whenua Māori for housing. Counsel described this omission as 'simply unacceptable'. Counsel was particularly critical of the Crown's decision not to revisit its limited employment locations policy, despite 'the crippling effect [of] this policy . . . on Māori'.[299] According to counsel for Elisabeth Crawford and Jeff Tukua, a key omission from the Crown's closing submissions concerned the role of local government in impeding Māori housing development. The Crown had noted that the role of local government was 'critical' to the inquiry (including stage one) and would be more fully explored in 'future stages', but counsel reiterated the position that 'the local government issues raised during Stage One by a number of claimants must be addressed in this Stage of the Inquiry'.[300]

4.4.1.2 *Tribunal analysis*

As can be seen, the claimants raised a number of issues with regard to building on whenua Māori that will be dealt with in the main stage of the inquiry. By this we mean the role of local government, both historically and today, the difficulties presented by the Resource Management Act, and so on. In fact the 'use and development of Māori land for housing' was one of the themes identified in the statements of claim by Tribunal staff in 2019, and the Tribunal subsequently commissioned a research report about housing on whenua Māori since 1870 (see section 4.2.1 above). As such, we will restrict ourselves here to narrow issues only.

Before doing so, though, we are compelled to say that the stories we were told about the living conditions of many of those who have returned to whenua Māori were shocking (see also the vignettes in section 2.9). Despite what we already knew, and what other Tribunal panels have been told in the past (such as the example quoted in section 3.2.1 from the *Mohaka ki Ahuriri Report*), we were appalled. Rural Māori poverty is severe in parts of New Zealand, and some of the evidence we heard described little short of a humanitarian crisis. Were people effectively camped in makeshift shelters through all seasons on public land in other parts of the country, one can only assume that the authorities would deploy services and offer assistance. Because this is taking place on Māori land, however, it remains essentially unseen.

The narrow issues we feel we can comment on here are the limited employment locations policy and the extent to which Te Tai Tokerau may be missing out on funding. In fact we see the two matters as potentially interrelated. The limited employment locations policy has been discussed by the Tribunal before. It was an issue in the Te Rohe Pōtae inquiry, particularly in places such as the west coast harbours of Kāwhia and Aotea, which were among many limited employment

298. Submission 3.3.81 (claimant joint submissions in reply for Wai 1464 and others), pp 2–3.
299. Submission 3.3.71 (Patuharakeke submissions in reply), p 10.
300. Submission 3.3.80 (Elisabeth Crawford and Jeff Tukua submissions in reply), pp 2–3.

locations within that inquiry district. The policy, which was introduced in 2004, is designed to discourage the migration of beneficiaries living in larger towns and cities to rural areas with little prospect of employment. In *Te Mana Whatu Ahuru*, the Tribunal cited academic criticism of the policy, including the conclusions of a 2005 thesis that it had a disproportionate impact on Māori and was largely ineffectual in deterring them from returning to their rural homelands. Given the limited information before it, however, the Tribunal declined to make any findings on the matter, suggesting that it 'would clearly appear to merit further research.'[301]

Ultimately, we find ourselves in the similar position of lacking sufficient evidence on the subject. We hope that will be rectified by research to be filed later in this inquiry. However, we will make the following observations. Denying (or at least seeking to deny) Māori the opportunity to return to their whenua on the basis of the limited employment prospects in those places appears little different from the policies that forced many Māori to urbanise in the 1950s and 1960s. Urbanisation is a topic that the Tribunal has traversed repeatedly and, while it is difficult to prove the connection between treaty breaches and urban migration, the Tribunal has previously made the point (for example, in *Te Mana Whatu Ahuru*) that the Crown was not 'a neutral actor' and 'encouraged Māori to leave their rural homelands through wilfully neglecting those communities where the prospects of employment were low'.[302] Likewise today, it appears that the Crown is not a neutral actor in its application of the limited employment locations policy. Mr Ablett-Hampson's explanation that clients seeking to return to papakāinga for cultural reasons would be 'assisted to work out whether, and how, they can meet their work obligations in that location', came across to us as a politer way of saying that the policy was inflexible.

It seems to us that, if a whānau is suffering through homelessness and unemployment in a city like Auckland, it is in no-one's interests for them to be forced to remain living in their car or a garage in order to continue to receive a benefit. If they have a better accommodation option in a more affordable but isolated rural location, the policy should allow for some discretion. It is clear from the evidence we heard that many have taken the step of rural retreat regardless of the limited employment locations policy, perhaps bearing out the aforementioned thesis conclusion. While it is somewhat outside our brief, we also believe that the maintenance of viable rural Māori communities is an essential means of maintaining Māori culture and identity. If only the elderly and retired are available to sit on the paepae or work in the marae kitchens, then hapū mātauranga will inevitably be further eroded. It would be an irony if, in this age of the Crown making amends for historical treaty breaches, it dealt further blows to the intergenerational transmission of mātauranga Māori by rigidly applying the limited employment locations policy.

301. Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2020), pt v, pp 71–72, 74.

302. Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims – Pre-publication Version* (Wellington: Waitangi Tribunal, 2020), pt v, p 74.

We have insufficient information before us to know whether the Crown is short-changing Te Tai Tokerau in its distribution of funding to address Māori housing need. Given what we already know of its unwillingness to support beneficiaries moving to many rural locations, though, we have little doubt that it is reluctant to fund housing developments in areas it views as remote. In regard to Mr Houghton's broader allegation that Te Tai Tokerau itself misses out, and the connected question of whether the Crown is in breach of the principle of equal treatment, we will need to await further evidence on the matter. Certainly, housing disparities in Northland are particularly acute: at the 2018 census Northland had the highest per capita rate of severe housing deprivation in the country.[303] In the circumstances, Te Tai Tokerau should arguably be receiving proportionately more housing assistance than other areas.

4.4.2 Rangatahi homelessness

4.4.2.1 *What the parties said*

Claimant counsel began their generic closing submissions on this topic by asserting that 'rangatahi are a taonga and as such are guaranteed protection within the tino rangatiratanga retained by Māori under Te Tiriti'.[304] Counsel did not attempt to define the term 'rangatahi', although they did point to some inconsistencies among Crown agencies as to whether youth were aged 16–24 years or 16–21 years, which made data comparison a challenge. Counsel also noted that the Crown's failure to count the number of rangatahi (and others) inquiring about housing assistance but not proceeding to a formal application had muddied the picture of rangatahi housing needs. Counsel added that the extent of need among homeless rangatahi aged under 16 was also unknown.[305]

The claimants' concerns included the level of support for rangatahi 'aging out' of care and protection (this happens when rangatahi turn 18 and are required to leave foster care). Counsel noted that the Homelessness Action Plan now provides support for young people leaving the care of Oranga Tamariki, but submitted that the number of placements available is too few.[306] Moreover, said counsel, the Homelessness Action Plan makes no provision for rangatahi faced with homelessness who have not come through the care and protection system. There were, at the time of our hearings, only 64 transitional housing beds for non-Oranga Tamariki rangatahi in Auckland, a level well below the number needed. Counsel depicted the Crown as being unprepared for supporting rangatahi who did not present as part of family groups. The Ministry of Social Development, for example, has particular funding for whānau in emergency housing with children, but not for

303. Kate Amore, Philippa Howden-Chapman, and Helen Viggers, *Severe Housing Deprivation in Aotearoa New Zealand* (Wellington: University of Otago, 2020), p 18; see also doc C14(a) (Kate Amore, Philippa Howden-Chapman, and Helen Viggers bundle of documents), p 282.

304. Submission 3.3.34 (claimant generic closing submissions on rangatahi and homelessness), p 1.

305. Submission 3.3.34 (claimant generic closing submissions on rangatahi and homelessness), pp 21–22, 43–44, 148.

306. Submission 3.3.34 (claimant generic closing submissions on rangatahi and homelessness), pp 12–15.

rangatahi who are living apart from their whānau. Likewise, counsel could not find any Kāinga Ora policies or programmes 'to directly assist homeless rangatahi other than assistance as a member of their whānau.'[307]

Counsel noted that the Ministry of Housing and Urban Development does have a programme called Supported Accommodation for Youth to support 16- to 19-year-olds on the housing register, but argued that the number of supported placements was 'miniscule when compared to the number of rangatahi who are currently experiencing homelessness'. Organisations supporting homeless rangatahi, such as Lifewise Trust, face funding constraints; these mean that, for rangatahi without overnight placements, the support services the Trust offers are only available from 8.30am to 5pm. Claimant counsel submitted that emergency accommodation in motels was also unsafe and unsuitable for rangatahi. Nor could young people turn to the private rental market, as one must be aged 18 to hold a tenancy.[308]

Bianca Johanson, of Lifewise Trust and a witness for the Te Matapihi claim, shared her professional experience from her youth work and advocacy. She told us, for example:

> we have 16-year-olds living in motels which is totally not good enough, inappropriate, unsafe, and very dangerous and many of our rangatahi tell us that they would rather be on the streets than in motels . . . They're a very terrifying space for our rangatahi to be in . . . Some of them are staying there for months. We know that some of those rangatahi are staying in there for up to a year. And so they're there with other adults, they're very vulnerable and they are highly targeted within those spaces.

She said that the majority of young people in emergency accommodation were Māori, and that the country was failing them. She described it as 'a massive human rights crisis.'[309]

In its closing submissions, the Crown appeared to accept that its response to rangatahi homelessness had been lacking, although it would only make 'acknowledgements' rather than 'concessions':

> The Crown acknowledges that more needs to be done to increase housing supports and services for rangatahi/young people experiencing homelessness. Work is currently being progressed to develop initiatives that focus on specific supports to rangatahi/young people under the HAP.
>
> The Crown also acknowledges that a lack of data specific to rangatahi Māori housing needs is a problem. Oranga Tamariki is currently unable to identify the overall level of housing need for rangatahi Māori leaving state care as this is not recorded in

307. Submission 3.3.34 (claimant generic closing submissions on rangatahi and homelessness), pp 21, 22, 28.
308. Submission 3.3.34 (claimant generic closing submissions on rangatahi and homelessness), pp 31, 46.
309. Transcript 4.1.6, pp 170–171.

> Oranga Tamariki's case work management system (CYRAS). Oranga Tamariki is also presently unable to identify the level of housing support provided to any individual as current reporting monitors the number of supported accommodation places. However, Oranga Tamariki does have data on the number of rangatahi/young people who age out of care each year and Oranga Tamariki has projections of the number of rangatahi/young people who may require ongoing accommodation support.[310]

According to Crown counsel, the Crown was endeavouring to turn this picture around. The Ministry of Housing and Urban Development, for example, was 'working as quickly as possible to increase the accommodation and support options for young people through transitional housing'. Further, 'Housing Ministers have agreed that agencies are to prioritise progressing advice that would address gaps in homelessness measures for rangatahi [/] young people.'[311] However, in response to our questioning, Crown counsel agreed it was 'fair' to say that, while there was 'activity', the Crown's initiatives aimed at youth homelessness were 'still some way off dealing with [the] scope of the problem'.[312]

4.4.2.2 *Tribunal analysis*

The various Crown failings we have identified elsewhere – the lack of attention paid to homelessness, the failure to collect adequate data, the slowness to respond – are, we believe, magnified in the case of rangatahi. That is because rangatahi (by which we mean rangatahi Māori, although this was not always the parties' approach) are a cohort with particular needs and vulnerabilities who are not properly catered for by an adult system. Forcing rangatahi into solutions designed for adults, or even for adults with young children, can do more harm than good. We were troubled to learn that homeless rangatahi have been placed on their own in emergency housing motels, and we consider that the Crown's recent efforts to address this problem are well overdue. Furthermore, while the Homelessness Action Plan's prioritisation of rangatahi 'aging out' of Oranga Tamariki care has been understandable, it has apparently allowed the Crown to lose focus on the wider problem. Regrettably, and predictably, there is no accurate data with which to gauge the extent of housing need among rangatahi. We suspect, in any event, that it is vastly greater than the current response is equipped for.

We therefore find that the Crown has breached the principle of active protection in its response to rangatahi homelessness. Not only has it failed to take particularly vigorous action to protect such a vulnerable group, but it has in fact taken little direct action to support this cohort at all. We also find that the Crown has breached the principle of good government through its failure to obtain adequate data on rangatahi. Had it done so, it may have been able to calibrate its policies accordingly.

310. Submission 3.3.65 (Crown closing submissions), pp 80–81.
311. Submission 3.3.65 (Crown closing submissions), pp 81, 82–83.
312. Transcript 4.1.9, p 118.

4.4.3 Released prisoners

4.4.3.1 *What the parties said*

Claimants said that housing provision was a crucial issue for released prisoners. They drew on evidence by technical witnesses and criminal justice researchers Dr Alice Mills and Cinnamon Lindsay Latimer. Dr Mills and Ms Lindsay Latimer cited a Department of Corrections research report that described safe, secure, and stable housing as 'the single most important reintegration issue for prisoners'.[313] In generic closing submissions, claimant counsel said that housing was internationally recognised as crucial to successful prisoner reintegration.[314]

The availability of housing for released prisoners is a particular issue for Māori, owing to their disproportionate representation in New Zealand's prison system. In closing submissions, claimant counsel noted that 58 per cent of the 7,595 sentenced prisoners released in 2019 identified as Māori.[315] Until recently, the Crown had taken 'almost no steps' to ensure housing provision for released prisoners, claimants said in generic closing submissions.[316] Counsel estimated that around 3,800 to 4,000 of the sentenced prisoners leaving prison each year lacked access to stable housing.[317] Many relied on housing support from Corrections and community groups. However, claimant counsel said the options available were 'limited and underfunded, and as a result cannot meet demand'; short-term funding also prevented programmes 'from bedding in and expanding'.[318]

Moreover, kaupapa Māori services remained scarce, claimants said. Although Māori accounted for the majority of people leaving prison, just one of the four main providers of accommodation for this group explicitly adopted a kaupapa Māori approach.[319] Counsel argued in generic claimant submissions that the

313. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 65; doc C1 (Alice Mills and Cinnamon Lindsay Latimer), p 6.

314. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 65–66.

315. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 65; doc C1 (Dr Alice Mills and Cinnamon Lindsay Latimer), p 4.

316. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 65.

317. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 65–66. Counsel for the Wai 237 and others claimants cited Department of Corrections evidence showing that '50% of people leaving prison have an unmet housing need, and that this rises to over 60% for Māori': submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 37; transcript 4.1.7, pp 716, 723; Diane Hallot and Madeline Patterson, 'Supported Accommodation Services for Released Offenders in New Zealand – A Review', *Practice: The New Zealand Corrections Journal*, vol 5, no 2 (2017), para 13 (doc C1 (Alice Mills and Cinnamon Lindsay Latimer), p 4); submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 65. Mills and Lindsay Latimer noted that it was unclear what Corrections meant by the term 'unmet housing needs' and whether it reflected the Statistics New Zealand definition of homelessness: doc C1, p 4.

318. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 66.

319. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 66; doc C1 (Alice Mills and Cinnamon Lindsay Latimer), p 37.

options available to Māori were often 'culturally inappropriate' or available only in 'fragmented locations'. This, counsel concluded, was a clear treaty breach.[320]

Individual claimant submissions also critiqued Crown policies and services 'both before and after incarceration'.[321] For example, one pointed out that Corrections tended to provide transitional accommodation for released prisoners for around three months only, whereas research had shown it needed to be available for longer.[322] The submission also referred to a Salvation Army report that described homelessness as 'a standard post-release outcome' for former prisoners, many of whom had no one to meet them when released or were 'dumped' at bus stations or emergency shelters.[323] In such circumstances, ex-prisoners felt tempted to 'do something stupid' or breach their release conditions so they could be returned to prison where 'at least . . . you have somewhere warm to sleep and something to eat'.[324] Claimant witnesses likewise gave evidence of a 'large number of prisoners [who] are being released with either nowhere to go or being expected to go back to an environment that was a contributor to their imprisonment'.[325] Dr Mills' and Ms Lindsay Latimer's evidence was relevant here, quoting 2018 statistics showing that 50 per cent of Māori were re-imprisoned within 24 months of being released from custody, compared to 35 per cent of non-Māori.[326] Meanwhile, counsel for Francis McLaughlin highlighted the situation of remand prisoners, saying they were just as likely to lose their housing as sentenced prisoners. While acknowledging that the Crown was working on a long-term plan to improve bail support services (see below, in the summary of the Crown's arguments), counsel said the Crown had 'failed to recognise the urgency required to resolve these issues' in the meantime.[327]

Few Crown policies and programmes addressing the needs of released prisoners were developed in partnership with Māori, claimants said. The Electronic Monitoring Bail Community Alternatives Programme implemented by Corrections, for example, had not been contracted out to iwi, hapū, or kaupapa Māori providers, counsel said.[328] Claimants also criticised *Hōkai Rangi: Ara Poutama Aotearoa Strategy 2019–2024*, which Corrections introduced in 2019 to

320. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), p 66; doc C1 (Alice Mills and Cinnamon Lindsay Latimer), p 37.

321. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 34; see also submission 3.3.40 (claimant-specific closing submissions for Wai 2742), pp 27–34.

322. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 70; doc C1 (Alice Mills and Cinnamon Lindsay Latimer), pp 34–35.

323. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), pp 35–36.

324. Annaliese Johnston, *Beyond the Prison Gate: Reoffending and Reintegration in Aotearoa New Zealand* (Wellington: The Salvation Army Social Policy & Parliamentary Unit, 2016), p 39, https://www.salvationarmy.org.nz/sites/default/files/uploads/20161207spputsa-prison-gate-2016_report.pdf (submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), pp 35–36).

325. Document B6(a) (Liz Cassidy-Nelson, Richard Pehi, and Samantha Cassidy speaking notes), p 5.

326. Document C1 (Alice Mills and Cinnamon Lindsay Latimer), p 7.

327. Submission 3.3.72 (claimant-specific submissions in reply for Wai 2123), p [4].

328. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 41.

make its services more treaty-compliant.[329] It was insufficient for Corrections to 'simply add Māori concepts such as tikanga' into policies and strategies like *Hōkai Rangi* 'if their contractors providing housing services are not kaupapa Māori entities or if their services do not align with tikanga.'[330]

Even where Corrections had partnered with Māori organisations to house released prisoners, these service providers faced substantial challenges.[331] Counsel cited the evidence of claimant Ricky Houghton of He Korowai Trust. The trust provided accommodation for released prisoners, but its capacity was just 12 beds. Mr Houghton said there were no other approved resources or facilities in the area that 'fit within the prison framework to allow [prisoners] to come home.'[332] The level of funding provided by Corrections was another concern for Māori service providers, some of whom had expressed 'real anxiety' about their ability to continue delivering services, counsel submitted.[333] Mr Houghton described the money He Korowai Trust received for homelessness services as 'reactive funding'.[334]

Summing up on behalf of 11 claimant groups, counsel expressed their concerns in the following terms:

> In conclusion, the Crown does not properly address ex-prisoner housing needs even though Corrections' case managers are tasked to do so. Although some ex-prisoners may benefit from the available Crown policies, the vast majority are left to fend for themselves and/or whānau members are unwittingly drawn into assisting in circumstances where they are without the wherewithal to do so. The evidence shows that repeat offending is reduced when ex-prisoner housing needs are met. Prison sentences and remand stays are often extended because there is no post-custodial address.[335]

Taken as a whole, claimants said that Crown policies, programmes, and services aimed at alleviating homelessness among Māori released prisoners had 'fallen woefully short' and, despite the Crown's efforts, were failing those who needed them.[336] Claimants sought a 'sincere and public apology . . . for the prejudice [they] have suffered and continue to suffer'.[337]

For its part, the Crown acknowledged in a statement filed before hearings began that its housing policies had been 'inadequate in meeting the needs of vulnerable Māori', including released prisoners. It did not, however, characterise this as a treaty breach.[338] In hearings, the Crown went on to acknowledge claimant evidence that 'a significant proportion of people leaving prison each year will

329. Document B98(a) (claimant bundle of Crown documents, vol 1), pp 1–40.
330. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 40.
331. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), pp 42–48.
332. Transcript 4.1.5, p 578.
333. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 42.
334. Transcript 4.1.5, p 582.
335. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 71.
336. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), pp 7, 35.
337. Submission 3.3.47 (claimant-specific closing submissions for Wai 237 and others), p 96.
338. Submission 3.1.471(a) (Crown response to Māori homelessness issues, stage one), p [4].

experience homelessness and, statistically, a majority of these people will identify as Māori'.[339] Crown witness Rebecca Barson, the general manager of Reintegration and Housing at Corrections, elaborated on this point, saying that '[w]e know that 50% of people leaving prison have an unmet housing need, and that this rises to over 60% for Māori'.[340] As to the adequacy of the Crown's response, Ms Barson said there had been 'significant growth' in contracted housing and reintegration services between 2012 and 2020. She said Corrections had increased funding for housing released prisoners from $4 million in 2012 (providing 54 accommodation places) to $35 million in 2020 (providing 331 places and supporting more than 1,100 people each year).[341] In Budget 2018, Corrections was allocated $57 million for new initiatives to be introduced under the Housing and Support Services Programme, including an additional 209 accommodation places.[342] However, the Crown accepted that 'accommodation options remain fragmented, making it difficult for people leaving prison and their whānau to know what is available and how to navigate these services'. Specialist services could also be restricted; some were available in only some parts of the country or to some categories of prisoners.[343]

On the specific needs of remand prisoners, Crown counsel acknowledged that those on remand and serving short sentences 'had been excluded from certain housing services in the past' even though they might be just as likely as other prisoners to lose their housing when incarcerated. Corrections recognised better engagement models were needed for case managers working with people on remand, and counsel said remand practices at Mt Eden Corrections Facility in Auckland were under review. Finally, the Crown said better support services that would speed up the bail process would be rolled out by June 2024.[344]

The Crown also drew attention to the barriers it said Corrections faced when supporting people transitioning from prison to the community or serving community-based sentences. While acknowledging that longer-term housing options were needed, counsel said service providers found securing such housing difficult; reasons included unaffordability, lack of housing supply, and 'discrimination due to criminal history'.[345] Moreover, in some parts of the country, district plans did not support setting up services for people under Corrections' management. Some providers were unable to find housing for released prisoners who had committed child sex offences.[346]

Several claimant groups took issue with aspects of the Crown's closing arguments in their submissions in reply – including the Crown's evidence about increased Corrections funding for housing released prisoners between 2012 and

339. Submission 3.3.65 (Crown closing submissions), p 84.
340. Document D4(b) (Rebecca Barson speaking notes), p [1].
341. Document D4 (Rebecca Barson), p 7.
342. Document D4 (Rebecca Barson), p 7.
343. Submission 3.3.65 (Crown closing submissions), p 85.
344. Submission 3.3.65 (Crown closing submissions), p 86.
345. Submission 3.3.65 (Crown closing submissions), pp 84–85.
346. Submission 3.3.65 (Crown closing submissions), p 85.

2020 (noted above).[347] The 'clear inference', claimant counsel submitted, was that the Crown considered its funding was now sufficient despite the well-evidenced shortage of available housing for released prisoners. Claimant counsel sought 'to attempt to gauge funding sufficiency' – something it could not do because the Crown had 'heavily redacted' much of the funding-related documentation provided to the inquiry 'on the basis of confidentiality'.[348] The Crown's decision to do so was compounded by an alleged lack of detail in Corrections' latest annual report, argued some claimants, which made it 'impossible to discern' the amount of funding actually allocated to housing released prisoners.[349]

Claimant reply submissions also took issue with the way the Crown had portrayed the effectiveness of some of its initiatives targeting ex-prisoners.[350] For example, claimants alleged that, while Corrections' Housing Support and Services Programme (established in 2019) comprised four initiatives, only two were operational. Together, they accommodated 'just 23 ex-prisoners at any one time'. The programme's 'patent incapacity' meant it 'fail[ed] to actively protect Maori ex-prisoners in accordance with the principles of te Tiriti ō Waitangi', claimant counsel argued.[351] One of the four initiatives was Te Waireka, where Corrections had partnered with Ngāti Kahungunu to provide housing and wraparound support for up to 12 Ngāti Kahungunu wāhine at a time. The Crown said the service offered an 'alternative to imprisonment . . . within a culturally appropriate environment', but counsel submitted that its eligibility requirements and limited capacity meant most of the wāhine Māori it was intended to assist were 'unsupported' when leaving prison.[352]

4.4.3.2 *Tribunal analysis*

Like rangatahi, released Māori prisoners represent a distinctive – and distinctively vulnerable – sub-group of all those affected by homelessness and its causes. Yet, their particular needs and circumstances have received little or no acknowledgement in the Crown's homelessness responses to date; it is really only in the context of the Department of Corrections' reintegration policies that this has happened at all. Even the number of people falling into this category remains open to debate due to the by-now-familiar deficiencies of the Crown's data collection practices. Notwithstanding, we know that around 4,000 people leave prison each year with an unmet housing need, and Corrections is helping only a minority. A considerable number face homelessness, and the majority of them are Māori. While the additional funding allocated to Corrections since 2018 has increased the amount

347. Memorandum 3.2.265 (claimant), p 2; submission 3.3.65 (Crown closing submissions), p 85.
348. Memorandum 3.2.265 (claimant), pp 2–3.
349. Submission 3.3.75 (claimant generic and specific submissions in reply), p 14.
350. Submission 3.3.75 (claimant generic and specific submissions in reply), p 11; submission 3.3.78 (claimant-specific submission in reply for Wai 2742).
351. Submission 3.3.75 (claimant generic and specific submissions in reply), p 13.
352. Submission 3.3.75 (claimant generic and specific submissions in reply), p 13; doc D5 (Department of Corrections Crown bundle), p [48].

of support available, it is still nowhere near enough to meet the need of all released prisoners.

The Crown accepted it had failed to grapple with the housing needs of released prisoners in the past but seemed confident that recent Corrections initiatives – especially *Hōkai Rangi*, which includes an explicit aim to support those leaving Corrections' care – marked a turning of the tide. In closing submissions, the Crown said that, since presenting its evidence, Corrections had made progress towards its goal of identifying, building, and maintaining 'authentic relationships with Māori partners' by introducing a Māori Partnerships Framework and high-level implementation plan.[353] We do not altogether share the Crown's optimism. In our view, problems identified elsewhere in this report – the Crown's consultation and partnering practices, the slow pace with which agencies are incorporating tikanga and mātauranga Māori, the cultural capability of staff – mean the framework will take some time to have any meaningful impact. Moreover, any such initiatives are of little practical effect given the ongoing scarcity of service providers with an explicitly kaupapa Māori approach, and the dearth of programmes developed in partnership with Māori or contracted to iwi or hapū providers. Even two years after introducing *Hōkai Rangi*, the Crown had not yet even begun holding wānanga with Māori groups about partnership at key levels[354] – something that surely deserved immediate priority by an agency committed to 'authentic relationships with Māori partners'. Until this situation changes, it is likely that services addressing the housing needs of Māori ex-prisoners will simply perpetuate those of the past – which, as Mills and Lindsay Latimer described, 'function to marginalise Māori and increase the conditions which make offending more likely'.[355]

Above all, the effectiveness of the limited programmes and services that are available to assist released prisoners – even those few services contracted to or developed with Māori organisations – is fatally constrained by a lack of Crown resourcing and capacity. Promises of increased accommodation have been slow to materialise. The gap between the level of need (and we note again the vagueness of the Crown's assessment) and the handful of places available to released prisoners in places such as Te Tai Tokerau is enormous. Although the Crown indicated the gap was being addressed by the recent increases in funding allocated to housing released prisoners, we – like the claimants – could not properly assess the adequacy of that funding. This was due to the insufficient detail provided in official Crown documents (such as the Corrections Annual Report) and the heavily redacted evidence given to this inquiry. Once again, this lack of information – along with the absence of reliable data about the numbers of Māori released prisoners with unmet housing needs – prevents us from reaching definitive conclusions on whether the Crown's response to the housing needs of released prisoners (including those on remand) is consistent with its treaty obligations.

353. Submission 3.3.65 (Crown closing submissions), p 84.
354. Transcript 4.1.7 (Topia Rameka), pp 774–777.
355. Document C1 (Dr Alice Mills and Cinnamon Lindsay Latimer), p 37.

What we can say is that the Crown's responses to date are adversely affecting not only Māori released prisoners but also their whānau. All too often, they are left to come up with accommodation solutions themselves or navigate services on behalf of relatives and friends. And, to look beyond the narrow focus of this inquiry stage for a moment, we are aware of the potential impact on the wider community too, given the evidence that homelessness can be a spur to re-offending and reincarceration. It seems to us that without addressing this issue (and many others), the Crown's ability to reach its goal of reducing Māori over-representation in the prison population will be compromised.

4.4.4 Gang whānau

4.4.4.1 *What the parties said*

Two claims raised multiple concerns about the effect of homelessness on gang whānau.

Counsel for Mr McLaughlin, whose claim was submitted on behalf of the Mongrel Mob, stated that the claimants sought a place 'at the head' of newly established Māori-led organisations such as the Māori Health Authority 'to ensure their members are a part of every step required to heal and strengthen their members'.[356] Counsel explained that the claim sought to support arguments advanced by other claimants by highlighting 'that as gang members they face a further level of discrimination that coupled with the racism makes it impossible for them to have equal and fair access to kāinga'.[357] The claimants considered:

> the current homelessness they face is the primary contributing factor to the extreme levels of deprivation they suffer. The inability of the claimants to access kāinga has and continues to have an intergenerational impact on their health, ā tinana, ā wairua, ā hinengaro hoki which in turn has a severe impact on every other part of their lives.[358]

Claimant counsel argued that gang members needed to be included in decision-making about Māori homelessness if any significant improvements were to be achieved.[359] The claimants' inability to participate in such decision-making was 'a clear breach of [their] Te Tiriti right to participate as a partner with the Crown'.[360] The claimants supported the 'by Māori for Māori' approach, but counsel cautioned:

> this approach will only be successful for Māori if the significant number of Māori that make up the Māori population who are gang members have a place at the decision-making table and that ultimately a 'by the gang, for the gang' approach is facilitated by both the Crown and those Māori the Crown shift the power to.[361]

356. Submission 3.3.44 (Francis McLaughlin closing submissions), p [6].
357. Submission 3.3.44 (Francis McLaughlin closing submissions), p [19].
358. Submission 3.3.44 (Francis McLaughlin closing submissions), p [11].
359. Submission 3.3.44 (Francis McLaughlin closing submissions), pp [5]–[8], [13].
360. Submission 3.3.44 (Francis McLaughlin closing submissions), p [19].
361. Submission 3.3.44 (Francis McLaughlin closing submissions), p [7].

The concerns of gang whānau were also mentioned in closing submissions filed on behalf of Paula Ormsby and Cherie Kurarangi of the Wāhine Toa movement of the Mongrel Mob Kingdom and Priority Whānau.[362] Counsel submitted that many of their Wāhine Toa clients associated with gangs 'have inherited trauma over generations arising out of previous Crown breaches that range from land alienation leading to rapid urbanisation, dislocation from communities and culture, and abuse in state care'. Counsel said that 'the Crown's obligations to establish workable legislation, policies and national strategies to adequately address Māori homelessness and severe housing deprivation in accordance with Te Tiriti o Waitangi/the Treaty of Waitangi is heightened' by this context.[363] Claimant counsel submitted that the Crown had failed to provide for their Wāhine Toa clients, and others associated with gangs, to exercise rangatiratanga through

> an outright apparent aversion to engaging with and funding gang members and their whānau to develop housing solutions for and on behalf of themselves. Instead, gang whānau experience compounding levels of discrimination with many ending up in hotels and experiencing further trauma as a result.[364]

Under questioning, Ms Kurarangi said she would like housing provided to support the assistance she offers vulnerable wāhine. She explained:

> At the moment I am working with four or five wahine who pool our money together so that we have enough kai to reach us throughout the week so that we have enough resources. So, I'd really love a fully furnished facility, washer, dryer, house like just to provide warmth, shelter, power and other basic needs for our whānau. The contributions for food obviously come from our whānau. We have access to māra kai. So, I've taken a lot of thought about how this can work for our families. I want to be supportive around mentorship and programming around whānau barriers so that our family can get past those barriers to actually get themselves into any housing.[365]

Ms Kurarangi also explained that Wāhine Toa needed more resources to improve outcomes and allow wāhine to be placed in affordable, high-quality, and more permanent housing.[366]

362. Submission 3.3.54 (claimant-specific closing submissions for Wai 1511 and Wai 3011), p 1. In their claim, the claimants say Priority Whānau refers to 'wahine Māori who are at the sharpest end of every socioeconomic statistic and are considered a high priority for intervention by the State. Priority Whānau include wahine Māori gang associates and their children who suffer the acute impacts of inter-generational trauma caused by colonisation and ongoing breaches of the principles of the Treaty of Waitangi by the Crown in a manner unseen by any other sector of society': statement of claim 1.1.70, p 1.
363. Submission 3.3.54 (claimant-specific closing submissions for Wai 1511 and Wai 3011), pp 9–10.
364. Submission 3.3.54 (claimant-specific closing submissions for Wai 1511 and Wai 3011), p 20.
365. Transcript 4.1.6, pp 479–480.
366. Transcript 4.1.6, p 481.

In her reply to Crown closing submissions, counsel for Mr McLaughlin identified another problem specifically affecting imprisoned gang members. They could be detained for longer than their initial sentencing period if they had no accommodation to which they could be bailed, she submitted. The same point was also made about prisoners more generally (as discussed in section 5.4.3).[367]

4.4.4.2 *Tribunal analysis*

Again, we lack data on the extent of homelessness or severe housing deprivation among gang whānau, who are even more likely than others to be invisibilised by data collection methods. Gangs are multiply marginalised communities, being (predominantly) Māori and Pasifika and generally drawn from the lower socio-economic strata of those groups. We assume that gang whānau are less likely to seek Government assistance or even to approach non-government homelessness services for support, including kaupapa Māori services. In the circumstances we think it would be a mistake to omit pro-social gang leadership from discussions about housing policy and homelessness. Such leaders have an ability to influence their communities in a positive direction that officials and others simply do not.

We state this as a general principle rather than a recommendation, because we would prefer to have heard and considered more evidence on the subject. As we have indicated, the Crown barely engaged with the issue of gang whānau in this stage of our inquiry, despite the principle of equal treatment requiring the Crown to treat different groups of Māori fairly and equally. The fact that Māori gang representatives chose to participate in the inquiry suggests both their frustration at being excluded from decision-making and policy formulation, and their willingness to be involved.

4.5 The Claimants' Proposed Solution

4.5.1 A Māori housing authority?

4.5.1.1 *What the parties said*

A number of claimants advocated for the establishment of a national Māori housing authority or taumata. They envisaged it playing a similar role to the Māori Health Authority, established in 2022 to work alongside the Ministry of Health to improve health outcomes for Māori. Mr Dennis described it as the 'establishment of a Ministerial level Maori decision making authority that is streamlined, mandated, funded and supported to making critical sector wide decisions'.[368] Mr Knox noted that Te Matapihi had suggested to Ministers in 2020 that they, '[i]n co-design partnership with Māori (potentially via the MAIHI Whare Wānanga), explore the establishment of a Māori Housing Authority'.[369] Like the Māori Health Authority, any such equivalent in housing would be consistent with 'devolution

367. Submission 3.3.72 (claimant-specific submissions in reply for Wai 2123), p [13].
368. Document B14 (Hurimoana Dennis), p 30.
369. Document B54 (Wayne Knox), p 4.

and supporting of mana motuhake approaches', he considered.[370] Barbara Browne, the chief executive of Kāhui Tū Kaha – a Ngāti Whātua provider of social housing services – also supported the idea of a Māori housing authority to ensure that Māori providers were adequately supported and funded.[371]

In generic closing submissions, claimants refuted any notion that MAIHI already offered them what they were seeking. Counsel contended that MAIHI did not amount to 'a true kaupapa Māori partnership or co-governance model', despite the Crown's portrayal of it as such. Counsel took particular issue with Mrs Calcott-Cribb's insistence that the MAIHI whare wānanga was a better outcome (in Mrs Calcott-Cribb's words) 'than having a true co-governance kind of arrangement', because the whare wānanga was a kaupapa Māori framework. Co-governance, said counsel, would amount to 'Māori having actual control'. As counsel put it, while decisions might be reached at the whare wānanga by consensus, Ministers still had to confirm them and recommend them to Cabinet.[372]

Claimants expressed different views on who should be represented on any newly established Māori housing authority or co-governance entity. Under questioning, counsel for Mr Dennis and Te Puea Marae felt any taumata or authority would need to 'be representative of Māori housing sector experts, providers, Māori with lived experience', and so on, who might be selected via some form of election. Such an authority would also, counsel added, pull together the 'disjointed . . . unstructured Crown system' spread across three different Crown agencies.[373] Presenting generic closing submissions on discrimination, counsel submitted that representation would need to be broad and inclusive:

> I think we need to identify who has the mana whakahaere over authority and experience over this domain, both at place and in conceptual terms and it has to be applied nationally, regionally, and locally and developed that way to make sense. . . . there needs to be the Tiny Deanes of the world, the women that work at the coal front, the marae leaders, the people that work as community educators with those most suffering from the homeless crisis[.][374]

Trevor McGlinchey, a witness for the New Zealand Māori Council claim, supported the concept of a Māori housing authority but not at the expense of local leadership by mana whenua. As he put it, 'we are not particularly supportive of pan-Māori responses. We are very supportive of [a] mana whenua-led response to it and if we had a Māori housing authority I would be seeking mechanisms

370. Transcript 4.1.5, p 231.
371. Transcript 4.1.5, p 254.
372. Submission 3.3.35 (claimant generic closing submissions on homelessness policy and strategy), pp 123, 127, 128; transcript 4.1.7, p 206.
373. Transcript 4.1.8, pp 93, 217.
374. Transcript 4.1.8, p 159; see also p 388, where counsel explained that a 'tiered' system of this kind was necessary because 'Māori are not a homogenous group'. Each tier would act 'as a filtration system to ensure that bespoke solutions are being created for iwi, hapū and whānau'.

that recognised that'.[375] Counsel for Patuharakeke similarly submitted that 'Patuharakeke does not accept that their voice is represented appropriately by any other group whether that be at an iwi or pan-iwi level'.[376] She added, under questioning, that Patuharakeke support for a taumata would depend entirely on the model of representation used.[377] Te Kapotai claimant Kara George advocated for 'a Māori rural housing authority' to address rural housing issues specifically,[378] while counsel for Francis McLaughlin, as we have just noted, expressed support for a taumata but warned it would only be successful if gang members had 'a place at the decision making table'.[379]

The prospect of a Māori housing authority presented something of a challenge to the thinking of some members of Te Matapihi, notwithstanding Mr Knox's evidence about Te Matapihi having proposed the concept to Ministers in 2020. Counsel for Te Matapihi reported:

> Te Matapihi is still trying to get their heads around what this might look like. I think there is a mixed view. I think some of the members and certainly, some of constituent groups, which make Te Matapihi up, are in favour. Others are less keen to see another sort of Māori representative body. Whatever the answer to that question may be, . . . I think it is something which needs to be consulted on, certainly much more with all of the claimant community and those engaged in Māori housing. It is not a position that Te Matapihi want[s] to hold.[380]

Counsel for Te Whānau o Waipareira Trust and the National Urban Māori Authority submitted that any taumata of this kind would come 'with issues such as funding, its membership, its role and its status'. He considered that 'ultimately it may just be too early in this inquiry process for such a recommendation to be made'.[381] For her part, claimant Donna Awatere-Huata cautioned against the establishment of a Māori housing authority, which she felt would be 'underfunded and over scrutinised'. Instead, she proposed that the funding be devolved directly to iwi that had already received their treaty settlements, since they 'have sufficient skill and capability to be able to handle their own housing portfolio'. This, she felt, would be less threatening to the Pākehā electorate.[382]

Crown counsel submitted that the Crown would carefully consider any Tribunal recommendation to establish a Māori housing authority, but added that there was nothing to stop the Crown and claimants embarking on discussions before the release of our report. One avenue, she said, could be the MAIHI whare wānanga. She did note, however, that Marama Edwards of the Ministry of Social

375. Transcript 4.1.6, p 511.
376. Submission 3.3.55 (claimant-specific closing submissions for Wai 745 and Wai 1308), pp 6–7.
377. Transcript 4.1.8, p 246.
378. Transcript 4.1.5, p 708.
379. Transcript 4.1.8, pp 329–330.
380. Transcript 4.1.8, pp 445–446.
381. Transcript 4.1.8, p 279.
382. Transcript 4.1.5, pp 378–379, 387–388.

Development had cautioned that change in the housing sector could be disruptive to progress.[383] Ms Edwards had suggested that recent budget announcements and other developments showed that 'we're on the right kind of course', but that change could 'cause quite a lot of disruption'.[384] Mr Crisp and Mrs Calcott-Cribb also cautioned that health and housing were quite different, suggesting health was controlled much more centrally than housing, in which local government played a significant role.[385]

The main reply to the Crown came from counsel for Mr Dennis, Te Puea Marae, and others. They began by recognising that our inquiry would move on to issues beyond homelessness, but submitted that the Tribunal could, for now, recommend 'the development of the Homelessness arm of the Taumata'. Responding directly to the Crown, they disputed Ms Edwards' characterisation of housing policy as being 'on the right course'. It was not possible to make this claim, said counsel, when policy was not being developed 'in genuine partnership with Māori' and when numbers on the housing register continued to climb. They suggested that Ms Edwards' argument was a 'slightly underhanded justification' for not establishing a taumata, since what was really needed was for the Crown to give effect to tino rangatiratanga.[386] Counsel for Patuharakeke also responded to Ms Edwards' comments, describing them as showing that the Crown was 'once again relegat[ing] the needs and desires of Māori to the back seat based on a preference to do things their way in the first instance'.[387]

Counsel for Mr Dennis, Te Puea Marae, and others listed the recommendations they sought concerning the establishment and role of the taumata. Amongst other things it should be 'co-designed in true partnership', have 'equal standing to the Crown agencies', 'have authority to make decisions and fund kaupapa Māori services', and 'the authority to monitor the Crown's performance in addressing Māori homelessness'.[388]

4.5.1.2 *Tribunal analysis*

Rather than considering the merits of a Māori housing authority now at this early point in the inquiry when we have focused on homelessness alone, we propose returning to it in the remaining stage of the housing policy and services inquiry. By then, we will have been able to consider the extent to which the Crown has complied with the principle of redress. We are conscious that, in the Health Services and Outcomes Inquiry, the Tribunal made an interim recommendation in its stage one report that the Crown and claimants explore 'the concept of a

383. Submission 3.3.65 (Crown closing submissions), pp 98–99.
384. Transcript 4.1.7, pp 432–433.
385. Transcript 4.1.7, pp 258–259.
386. Submission 3.3.86 (claimant joint closing submissions in reply for Wai 2699 and others), pp [7]–[8].
387. Submission 3.3.71 (Patuharakeke submissions in reply), p 12.
388. Submission 3.3.86 (claimant joint closing submissions in reply for Wai 2699 and others), pp [8]–[9].

stand-alone Māori primary health authority',[389] and that the Crown subsequently established Te Aka Whai Ora – Māori Health Authority. However, we think there are some key differences in that case which enabled such a recommendation, besides the centralised control of the health system referred to by Mr Crisp and Mrs Calcott-Cribb. Principally, the Health Services and Outcomes Inquiry was considering system-wide issues and challenges (in relation to primary health care specifically), something that we have expressly committed not to do at this stage of our inquiry. That said, we do sympathise with the claimants' contention that a Māori-controlled (or at least co-governed) authority would bring real focus to the striking disparities Māori suffer in housing outcomes, and would be a better expression of tino rangatiratanga than current arrangements.

At this stage we will, therefore, keep considering whether there is potential for a stand-alone Māori authority given the diverse stakeholders and factors that influence housing outcomes. But we are disinclined to propose a specific solution at this stage without the benefit of evidence and argument to be heard in the next stage of our inquiry – and in light of our view that homelessness is essentially a symptom of a spectrum of systemic and historical drivers.

389. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p165.

CHAPTER 5

KŌRERO WHAKATEPE / CONCLUSION

This inquiry into Crown policies concerning Māori homelessness is new for the Tribunal. Many panels have considered the adequacy of the Crown's support for Māori housing in historical district inquiries, and others have dealt with contemporary social issues. But none have shared our particular focus. There are several strands of Tribunal jurisprudence we can draw on for guidance, however, and this has enabled us to identify appropriate treaty standards for the Crown to have met (see section 3.2.1). We expect that we will develop a fuller discussion of relevant treaty principles in our main report.

Our inquiry period begins in 2009, when Statistics New Zealand developed its definition of homelessness. Officials had been asked by ministers to begin this work the previous year, perhaps prompted by growing pressure from the Coalition to End Homelessness and other advocates who were pointing to the lack of any means of measuring the extent of homelessness in New Zealand. There was no surge in numbers on the housing register at the time, and nor was there a particularly strong public focus on homelessness compared to the attention the subject has received since 2016. Regardless, ministers clearly realised that it made good policy sense to formulate a definition – and, compared to other western democracies, New Zealand was somewhat behind in adopting one.

Beginning our inquiry in 2009 was therefore logical, but we certainly do not wish to convey the impression that homelessness is only a post-2009 problem. We have absolutely no doubt that the origins of the current crisis lie much deeper, and that problems already existed in the housing system in 2009 that were leading inexorably towards greater trouble. That is a story we will need to narrate in our main report once we have heard evidence about the state of Māori housing during and after colonial land loss, the advent of the welfare state in the 1930s, and its later abandonment in the neo-liberal political economy of the 1980s and beyond. In sum, it is not possible to account for the factors that have led to the scale of housing deprivation we see today in an inquiry that begins in 2009.

We can see, however, that Government actions and omissions in the first half of our inquiry period exacerbated some pre-existing weaknesses. From 2010, the Crown sought to reduce its provision of social housing and transfer more responsibility to community housing providers. The number of State houses and their proportion of total housing stock declined, but community housing providers do not appear to have added sufficient homes to mitigate this. This shortfall took place just as housing affordability began to severely worsen. The Crown developed a Māori housing strategy in 2014 but did little to implement it, failing even to obtain

baseline data with which to measure its progress. The strategy also had practically no focus on homelessness. An earlier Housing New Zealand Māori-focused strategy had been subsumed in 2010 into a generic strategy, meaning from 2010 to 2014 there was no strategic focus across Government on Māori housing needs. From 2009 until 2014, the Ministry of Social Development did not introduce any new housing benefits. The ministry also deployed a triage system that hindered access to the housing register. And, when a housing crisis became all too apparent in 2016, the Government's first instinct was to deny it. It took the actions of the news media and a South Auckland marae to bring the scale of the problems into clear focus.

It is worth recapping on the extent of this crisis. As we set out in chapter 2, the 2018 census revealed there to be 41,644 people suffering from severe housing deprivation across its first three categories (being without shelter, in temporary accommodation, or sharing accommodation). A further 60,479 people were severely housing deprived in the new fourth category enabled by the 2018 census, uninhabitable housing. Māori were significantly over-represented among those severely housing deprived across the first three categories, with their share of this group representing 1.7 per cent of the Māori population, as opposed to the comparative Pākehā share being only 0.4 per cent of the Pākehā population. Māori were thus four times more likely to be homeless than Pākehā (although problems with the 2018 census likely make this stark imbalance seem smaller than it really was). Moreover, the impact of the crisis on Māori appears to have worsened considerably over the last decade. From being consistently around one-third of all primary applicants on the housing register for roughly the first five years of our inquiry period, Māori had by 2020 become the majority. The housing register numbers have also risen to unprecedented levels. In recent years, Māori have also made up a clear majority of recipients of Emergency Housing Special Needs Grants.

We turn now to summarise the key conclusions we have reached throughout this report. For reasons amply explained in chapters 1 and 4, we have had to restrict ourselves in stage one of our inquiry to a set of narrow issues that can be dealt with in isolation from broader housing system issues, even though homelessness clearly stems from a wide range of factors. That is, the majority of claimants pressed for a prioritised inquiry on the Crown's response to homelessness and the Crown supported this, even though homelessness is impacted by matters we were destined to inquire into later. We summarise our conclusions on the narrow matters we have covered – highlighted here in bold – as follows.

The **definition of homelessness** did not figure in the statement of issues but, as it featured repeatedly in claimant submissions and evidence, we have considered it in this report. We believe that the Statistics New Zealand definition is inadequate, as it does not reflect Māori perspectives on homelessness. Nor, however, do we think the claimant definition – which covers similar ground in terms of housing inadequacy but extends beyond this to encompass matters such as the loss of ahi kā roa and tino rangatiratanga – is particularly workable. We recommend that

the Crown and claimants should work together in partnership to co-design a new definition.

We also examine the nature of **the Crown's treaty duty with respect to housing**. We conclude that the Crown has an article 2 duty to provide housing because of the guarantee of tino rangatiratanga over kāinga. The 'kāinga' referenced in te Tiriti by and large no longer exist, due to Crown actions that caused widespread land loss and led to urbanisation. It is in that context that the Crown must at the very least provide housing for Māori who are homeless, since the restoration of kāinga in such pressing circumstances is impractical. Furthermore, the Crown has article 3 duties to achieve equitable housing outcomes for Māori. We also conclude that the Crown has a number of binding obligations to provide adequate housing under **international agreements** it has entered, although given the broad nature of these obligations it is again a matter we will examine in our main report.

On the issue of **data collection**, the Crown has failed to compile adequate data on homelessness, and its best measurement tool – the census – was severely compromised by methodological issues in 2018. Furthermore, as noted above, **the Crown's general response to homelessness** in the first seven years of our inquiry period was almost singularly lacking. The Crown seems to have been incapable of recognising the potential for significant levels of homelessness, and we suspect that the barriers it created to entry onto the housing register from 2015 to 2017 merely obscured the growth of unmet housing need. The Crown is certainly more focused on homelessness now after its years of inaction. But as so much of the Crown's activity was still very recent – or even ongoing – during our hearings, it would have been premature to assess its impact in this report.

In reorienting itself, **the Crown's consultation with Māori** has been relatively narrow. We do not know whether this is a continuation of past practice, since institutional memory about consultation over *He Whare Āhuru* has largely been lost. Regardless, we consider that the Crown needs to open itself up to a broader range of Māori voices in developing its policy. At present, we have the impression that the Crown prefers simply to consult the Iwi Chairs Forum and Te Matapihi rather than contemplating who else might be part of the Māori community of interest in housing issues. The Crown should also be careful to avoid over-reach in its **use of Māori methods, values, and names**. Such over-reach risks those who are not qualified employing terms they do not understand, as we saw in Crown witnesses' notions of abiding by kaupapa Māori principles or the Crown even being kaupapa Māori. We agree that the Crown needs to embrace Māori perspectives, but it should first empower employees with sufficient knowledge – such as its Māori-focused teams – to ensure it is on the right track.

Crown coordination is another major challenge. Splitting the development of housing policy, the assessment of housing need, and the provision of state housing between three separate agencies places an onus on the Crown to be in synch. We should also mention in this regard that a fourth agency, Te Puni Kōkiri, takes the lead on the issue of housing on whenua Māori. We are yet to see evidence of significant improvement in coordination and the reality is that important

innovations, such as the co-location model, have in fact been initiated by the claimants. The assessor of housing need – the Ministry of Social Development – is itself attempting to shift away from **an entrenched culture that is insufficiently responsive to Māori needs** and often treats beneficiaries punitively.

An important aspect of homelessness that is largely hidden from public attention is the appalling living conditions of many Māori on **rural Māori-owned land**. We will address the barriers to building on whenua Māori in our main report, but meanwhile must state unequivocally that such poverty should be unacceptable in twenty-first century New Zealand. An obvious impediment to Māori returning to their rural land is the Crown's limited employment locations policy. It disadvantages Māori whose kāinga (in the sense of tribal home) are remote from population centres and is something we would like to investigate further. We also heard allegations that Te Tai Tokerau receives less than its proportionate share of housing assistance, and this too is something we intend to learn more about. Relative neglect of homelessness in isolated rural communities would square with the ethos of the limited employment locations policy but is clearly not an adequate response to a real and apparently growing problem.

With regard to **other specific groups experiencing homelessness**, we believe that support for homeless rangatahi has fallen particularly short. Released prisoners are also a vulnerable cohort, and while the Crown maintains it is taking action on the matter (as it does with rangatahi homelessness), we did not receive evidence that convinced us that the need is being fully met. As for gang whānau, the Crown's silence suggests an unwillingness to be drawn on the subject, although its housing obligations to Māori exist regardless of gang association. The principle of equal treatment means the Crown must treat different groups of Māori fairly and equitably.

Despite our analysis being significantly constrained by the interconnection of homelessness to many housing matters we have not yet inquired into, we have nonetheless been able to make certain findings of treaty breach. To reiterate, these are as follows:

- We find that the Crown breached its treaty duty of consultation through Statistics New Zealand's failure to adequately consult with Māori in the development of its homelessness definition in 2009 and through its failure to rectify this in the period since.
- We find that the Crown's prolonged failure to adequately collect data on homelessness in New Zealand constitutes breaches of both the principles of good government and active protection.
- The Crown conceded it had breached the treaty in the 'early part' of our inquiry period through its inadequate response to homelessness. We consider that this concession covered the period till at least the first half of 2016. Specifically, we find that the Crown breached the principle of active protection by not providing homeless Māori with housing that meets a range of basic standards in terms of amenities, comfort, and security. We find that the Crown breached the principle of equity through the growing overrepresentation of Māori with unmet housing need. And we find that the

Crown breached the principle of good government by failing to implement or monitor progress with *He Whare Āhuru*.

- Turning to the Crown's more recent suite of policies and strategies, we find that the Crown breached the principle of partnership by the narrowness of its consultation over the Homelessness Action Plan and the MAIHI Framework.
- The Crown acknowledges that ongoing 'fragmentation' and 'congestion' within the housing system is undermining Māori housing ambitions; this confirms that the Crown has been in breach of the principle of good government in this regard for at least most of our inquiry period, if not all of it.
- As the Crown conceded in the Oranga Tamariki inquiry, it has failed over a long period to reform the welfare system in order to improve outcomes for Māori; at a minimum, we find this to be a breach of the principle of good government.
- With specific regard to rangatahi homelessness, we find that the Crown has breached the principle of active protection in its failure to take vigorous action to protect such a vulnerable group. We also find that the Crown has breached the principle of good government through its failure to obtain adequate data on rangatahi homelessness.

The idea of a Māori housing authority as a remedy for homelessness and other challenges in the housing system interested many of the claimants. They conceived of some kind of Māori entity controlling Māori housing issues, perhaps akin to the new Māori Health Authority, Te Aka Whai Ora. However, on the basis of the evidence we have heard on homelessness alone, we are in no position to make a recommendation to that effect. Rather, it is a matter for us to return to later in the inquiry, as indeed some claimants recognised.

We acknowledge that, in this report, we have delivered a limited assessment of Crown actions impacting on Māori homelessness. For example, historical causes – even as recent as the 1990s – lie outside our time period, and structural or systemic matters are beyond our narrow set of issues and must await the main part of our inquiry. We acknowledge that the Crown has introduced or proposed a number of policies; however, many date from the last part of our inquiry period (2018 to 2021) and are thus too recent to assess. As we have made clear, these obstacles to reporting fully are the inevitable result of prioritising an issue that transcends every aspect of housing.

For that reason, we look forward to the rest of our inquiry. Undoubtedly, this report will not be our last word on homelessness, because the issue will remain inescapably present as we move ahead. We will, in a later report, be able to assess whether there has been any improvement in the 2023 census figures on severe housing deprivation, whether the numbers of people on the housing register and receiving Emergency Housing Special Needs Grants have reduced, whether there has been an increase in both the number of State houses and their proportion within the total housing stock, and so on. Looking back, we will be able to discern and remark upon longer-term trends that have led to the current housing crisis Māori face, and ascribe responsibility where it is due. And at that point, we

will also be able to assess whether Crown policies and initiatives that have been bedding in since the stage one inquiry finished – namely the MAIHI Framework for Action and the Homelessness Action Plan, whose overdue appearance we welcome – have begun to shift outcomes for Māori.

In the main stage of our inquiry, parties will therefore be able to make further closing submissions to us about the success or otherwise of the Crown's current policies and strategies. We stress, however, that this is not an interim report. We have refrained from making findings where we have had insufficient information to do so. But we have reached findings on matters where we have had a clear picture of Crown actions and omissions, and we do not intend to revisit those findings in a later report unless there is particularly good reason to do so.

Dated at Wellington this 17th day of May 2023

Judge Craig Coxhead, presiding officer

Dr Paul Hamer, member

Prue Kapua, member

Basil Morrison CNZM, JP, member

APPENDIX

LIST OF CLAIMS, CLAIMANTS, INTERESTED PARTIES, AND COUNSEL PARTICIPATING IN STAGE ONE OF THIS INQUIRY

The Claims, Claimants, and Counsel

Wai 120

Claim name: Opua Lands and Waterways claim

Named claimant(s): Te Raumoa Balneavis Kawiti (deceased), Rhonda Aorangi Kawiti, and Michelle Jessop on behalf of the Kawiti Marae Committee, the Kawiti whānau, and descendants of Ngāti Hine, Ngāti Manu, Te Kapotai, Ngāti Rāhiri, Ngāti Rangi, Ngaitewake and Ngāpuhi iwi

Representation: Te Haa Legal

Wai 237

Claim name: Horowhenua Block claim

Named claimant(s): William Taueki on behalf of Ron Taueki (deceased), the Taueki whānau, and Muaūpoko

Representation: Tamaki Legal

Wai 421

Claim name: Puketotara Block claim

Named claimant(s): John Rameka Alexander (deceased); Te Maramatanga Napia, Natalie Kay Baker; and Bonny Craven on behalf of Te Whiu Hapū

Representation: Bryce Lyall

Wai 558

Claim name: Ngāti Ira o Waioeka Rohe claim

Named claimant(s): John Kameta, Te Rua Rakuraku, Paeone Goonan, Te Ringahuia Hata, and John Te Rehita Pio on behalf of Ngāti Ira o Waiōweka Rohe

Representation: Annette Sykes & Co

Wai 593

Claim name: Taiaire 1E2 Block claim

Named claimant(s): Jimmy Ruawhare (deceased) and Diane Ruawhare on behalf of Te Uri o Hua, Takotoke, Ngāti Kura, Ngāti Whakaeke, Ngāi Tu, Ngāti Mahia, and the Ruawhare whānau

Representation: Bryce Lyall

Wai 682
Claim name: Ngāti Hine Lands, Forests, and Resources claim
Named claimant(s): Rewiti Paraone, Kevin Prime, Erima Henare, Pita Tipene, and Waihoroi Shortland on behalf of Te Runanga o Ngāti Hine and the descendants of Torongare and Hauhaua
Representation: Tukau Law

Wai 700
Claim name: Whirinaki Lands and Waters (Hokianga) claim
Named claimant(s): Anania Wikaira and Ben Morunga (deceased) on behalf of the hapū of Whirinaki
Representation: Afeaki Chambers

Wai 745
Claim name: Patuharakeke Hapū Lands and Resources claim
Named claimant(s): Luana Pirihi and Paki Pirihi (deceased) on behalf of Patuharakeke
Representation: Dixon & Co Lawyers

Wai 762
Claim name: Waimiha River Eel Fisheries (King Country) claim
Named claimant(s): Evelyn Kereopa on behalf of herself, the Kereopa whānau, and members of Te Ihingarangi
Representation: Tamaki Legal

Wai 861
Claim name: Tai Tokerau District Maori Council claim
Named claimant(s): Sir Graham Latimer, Tom Kahiti Murray, Richard John Nathan, and Sir Hector Busby on behalf of the Mangakahia Hapū Claims Collective and Te Tai Tokerau Māori Council
Representation: Ranfurly Chambers

Wai 869
Claim name: Inland Kerikeri claim
Named claimant(s): John Rameka Alexander (deceased), Rangimarie Thompson (deceased), and Bonny Craven on behalf of Ngāti Mau, Ngāti Rehia, Ngāti Tautahi, Ngāi Te Wake, Te Maunga, Te Hikutu, and others
Representation: Bryce Lyall

Wai 966
Claim name: Ngāpuhi Te Tiriti o Waitangi claim
Named claimant(s): Gray Theodore, Pereme Porter, and Rangimarie Maihi on behalf of Ngāpuhi
Representation: Te Haa Legal

Wai 972
Claim name: Ngāti Kauwhata ki te Tonga Surplus Lands claim
Named claimant(s): Edward Penetito and others on behalf of themselves, the Kauwhata

Treaty Claims Komiti, Te Marae Komiti o Kauwhata Trust, and Ngā Uri Tangata o Ngāti Kauwhata ki te Tonga
Representation: Mahony Horner Lawyers

Wai 985
Claim name: Hokianga Regional Lands claim
Named claimant(s): Reverend Miriama Te Pure Solomon and Graeme Prebble Jr for the mokopuna of Nanny Miriama and her late husband Mac Solomon
Representation: Afeaki Chambers

Wai 996
Claim name: Ngāti Rangitihi Inland and Coastal Land Blocks claim
Named claimant(s): David Potter, Andre Paterson (deceased), and Cletus Maanu Paul on behalf of themselves and the hapū of Ngāti Rangitihi
Representation: Phoenix Law

Wai 1018
Claim name: Otaraua and Rahiri Hapū ki Waikanae Lands claim
Named claimant(s): Apihaka Tamati-Mullen Mack, Rawiri Evans, Marama Rhonda Mullen, and Sonny Thomas on behalf of Ngātiawa ki Kāpiti
Representation: Te Mata Law

Wai 1247
Claim name: Kororipo Lands and Resources claim
Named claimant(s): John Rameka Alexander (deceased), Cynthia Rameka, and Te Iwi Ngaro Rameka on behalf of Ngāti Tautahi, Te Mawhatu, and Te Uri Taniwha
Representation: Bryce Lyall

Wai 1308
Claim name: Patuharakeke Hapū ki Takahiwai claim
Named claimant(s): Ngawaka Pirihi and others on behalf of the owners of various Pukekauri and Takahiwai land blocks
Representation: Dixon & Co Lawyers

Wai 1383
*Claim name:*Kauwhata, Rangi and Wharetotara claim
Named claimant(s): Ani Martin, John Rameka Alexander (deceased), Natalie Kay Baker on behalf of Ngāti Mau, Ngāti Rangi, Ngāti Rahiri, Te Uri Taniwha, Te Whānau Wai Ngāti Kiriahi, Ngare Hauata, Te Uri Kapana, Te Whānau Tara, Ngāti Korohue, Ngāti Rehia, Ngāi Tawake, and Ngāti Hineira
Representation: Bryce Lyall

Wai 1384
Claim name: Whangaruru Lands claim
Named claimant(s): Elvis Reti, Henry Murphy and Merepeka Henley on behalf of the tangata whenua of Whangaruru
Representation: Phoenix Law

Wai 1464
Claim name: Te Kapotai and Ngāti Pare Hapū claim
Named claimant(s): Te Riwhi Whao Reti, Pearl Reti, Hau Hereora, Romana Tarau, and Edward Cook on behalf of Te Kapotai and Ngāti Pare
Representation: Tukau Law

Wai 1511
Claim name: Ngāi Tamatea Hapū ki Waiotahe Lands claim
Named claimant(s): Kate Keita Hudson on behalf of the descendants of Te Waru Tamatea and his people of Ngāi Tamatea Hapū ki Waiotahe (Whakatōhea)
Representation: Te Whenua Law

Wai 1524
Claim name: Pomare Kingi claim
Named claimant(s): Louisa Te Matekino Collier, Hineamaru Akinihi Lyndon, and Ira Norman on behalf of themselves, and on behalf of Pomare Kingi and Patira Te Taka, who were of Ngāti Kahu o Torongare, Te Parawhau, Te Uri Roroi, Ngāti Te Rino, Ngāti Manu, Ngāti Hine, and Ngāi Tahuhu
Representation: Phoenix Law

Wai 1531
Claim name: Land Alienation and Wards of the State (Harris) claim
Named claimant(s): Te Enga Harris and Lee Harris on behalf of themselves, and the Harris whānau
Representation: Tamaki Legal

Wai 1537
Claim name: Descendants of Wiremu Pou claim
Named claimant(s): Louisa Te Matekino Collier, Amiria Waetford and Hineamaru Akinihi Lyndon on behalf of themselves, and the descendants of Wiremu Pou
Representation: Phoenix Law

Wai 1541
Claim name: Descendants of Hinewhare claim
Named claimant(s): Louisa Te Matekino Collier and Frederick Collier Junior on behalf of themselves, and on behalf of Hinewhare and her descendants.
Representation: Phoenix Law

Wai 1546
Claim name: Waikare Inlet claim
Named claimant(s): Te Riwhi Whao Reti, Pearl Reti, Hau Hereora, Romana Tarau, and Edward Cook on behalf of Te Kapotai and Ngāti Pare
Representation: Tukau Law

Wai 1670
Claim name: Descendants of Te Uri o Ratima claim
Named claimant(s): Ricky Martin Houghton on behalf of Te Paatu and Te Uri o Ratima
Representation: Mahony Horner Lawyers

Wai 1673
Claim name: Ngāti Kawau (Collier and Dargaville) claim
Named claimant(s): Louisa Te Matekino Collier, and Rihari Richard Takuira Dargaville on behalf of themselves, and Ngāti Kawau
Representation: Phoenix Law

Wai 1681
Claim name: Pukenui Blocks claim
Named claimant(s): Popi Tahere, Louisa Te Matekino Collier, and Arthur Mahanga on behalf of themselves and Te Waiariki-Ngāti Korora, Ngā Uri o te Aho, and Ngā Hapū o Ngāpuhi
Representation: Phoenix Law

Wai 1781
Claim name: Ngāi Tama Haua (Biddle) claim
Named claimant(s): Tracy Francis Hillier and Rita Rangitaia Wordsworth on behalf of themselves and the hapū of Ngāi Tamahaua
Representation: Wackrow Panoho & Associates

Wai 1789
Claim name: Descendants of Hineato Savage claim
Named claimant(s): Bella Savage on behalf of herself and the descendants of Hineato Savage
Representation: Te Mata Law

Wai 1832
Claim name: Hapū o Te Rohe Potae o Whangaroa (Kingi) claim
Named claimant(s): Tarewa Kingi and Owen Kingi on behalf of Whangaroa Papa Hapū and Ngāti Uru
Representation: Bryce Lyall

Wai 1837
Claim name: Whānau and Hapū of Te Tai Tokerau Settlement Issues (Nehua) claim
Named claimant(s): Deidre Nehua on behalf of the whānau, hapū and iwi of Te Tai Tokerau
Representation: Te Haa Legal

Wai 1843
Claim name: Te Aeto Hapū claim
Named claimant(s): Terence Tauroa on behalf of Te Aeto Hapū, as descendants of Te Puta and Taramainuku
Representation: Mahony Horner Lawyers

Wai 1885
Claim name: Māori Women's Refuge (Simpson and Albert) claim
Named claimant(s): Ariana Simpson, Ruahine Albert, Catherine Anne Mitchell, Ann Hartwell and on behalf of the Māori Women's Refuge
Representation: Annette Sykes & Co

Wai 1886
Claim name: Ngāti Tara (Gabel) claim
Named claimant(s): Robert Gabel on behalf of the Ngāti Tara hapū
Representation: Tamaki Legal

Wai 1940
Claim name: Waitaha (Te Korako and Harawira) claim
Named claimant(s): Jane Mihingarangi Ruka Te Korako, and Te Rungapu (Ko) Ruka on behalf of the Grandmothers Council of the Waitaha Nation, including the three hapū of Ngāti Kurawaka, Ngāti Rakaiwaka and Ngāti Pakauwaka
Representation: Phoenix Law

Wai 1941
Claim name: Kingi and Armstrong (Ngā Puhi) claim
Named claimant(s): Marama Stead, Rihari Dargaville, and Joseph Kingi
Representation: RightLaw

Wai 1992
Claim name: Ngāti Mahanga, Ngāti Tamaoho and Ngāti Apakura (Tahapeehi) Lands claim
Named claimant(s): Piriwhariki Tahapeehi and Audrey Okeroa Rogers on behalf of themselves and their whānau
Representation: Tamaki Legal

Wai 2005
Claim name: Te Mahurehure (Egen) Lands claim
Named claimant(s): Denise Egen on behalf of herself, her whānau and members of Te Mahurehure
Representation: Tamaki Legal

Wai 2063
Claim name: Ngāti Tai Lands (Cotter- Williams) claim
Named claimant(s): Jasmine Cotter-Williams on behalf of herself and her whānau and Ngāti Taimanawaiti iwi
Representation: Tamaki Legal

Wai 2123
Claim name: Effects of Colonisation (McLaughlin) claim
Named claimant(s): Francis McLaughlin on behalf of the Mongrel Mob, their whānau, hapū, iwi, whānau whānui and whāngai
Representation: NL Lawyers

Wai 2179
Claim name: Ngā Uri o Tama, Tauke Te Awa and Other Lands claim
Named claimant(s): Rihari Dargaville
Representation: RightLaw

Wai 2206
Claim name: Ngā Wahapu o Mahurangi – Ngāti Whatua Ngāpuhi claim

Named claimant(s): Charlene Walker-Grace (deceased) on behalf of herself and members of Te Hokingamai e te iwi o Ngāti Whātua Ngāpuhi nui tonu, Ngāti Korohue, Te Urirori, Te Uri Tāniwha and Ngāti Hineira
Representation: Tamaki Legal

Wai 2217
Claim name: Children of Te Taitokerau (Broughton) claim
Named claimant(s): Maringitearoha Kalva Emily Pia Broughton and Violet Nathan
Representation: Ranfurly Chambers

Wai 2257
Claim name: Te Whānau a Apanui Mana Wahine (Stirling) claim
Named claimant(s): Maruhaeremuri Stirling (deceased), Ruiha Stirling, Parehuia Herewini-Kahika and Victoria Edwards-Kora for an on behalf of themselves and in association with the whānau, hapū and iwi of Te Whānau-ā-Apanui and Whakatōhea and on behalf of the direct descendants of Tio Kahika
Representation: Te Haa Legal

Wai 2394
Claim name: Descendants of Hone Karahina claim
Named claimant(s): John Pikari on behalf of himself and the descendants of Hone Karahina, and members of the hapū of Te Uri o Hua and Ngāti Torehina
Representation: Tamaki Legal

Wai 2494
Claim name: Racism Against Māori claim
Named claimant(s): Donna Awatere-Huata of Ngāti Porou, Ngāti Whakaue and Ngāti Hine on behalf of herself and all Māori
Representation: Annette Sykes & Co

Wai 2679
Claim name: South Taranaki District Council Rates (Rerekura Whānau) claim
Named claimant(s): Herbert Rerekura, for himself and on behalf of the Rerekura Whānau
Representation: Ranfurly Chambers

Wai 2697
Claim name: Holistic Māori Health Approach claim
Named claimant(s): Reverend Anthony Brooking
Representation: Te Mata Law

Wai 2699
Claim name: Housing and Social Services (Dennis) claim
Named claimant(s): Hurimoana Nui Dennis with the support of the trustees of Te Puea Memorial Marae Trust on behalf of themselves, their whānau, hapū, marae, iwi, and Māori of Aotearoa
Representation: Wackrow Panoho & Associates

Wai 2710
Claim name: Marine and Coastal Area (Takutai Moana) Act (Hokianga Hapū whānau) claim
Named claimant(s): A collective of Hokianga hapū whānau including Te Hikutu, Te Ihutai, Te Uri o Te Aho, Kohatutaka, Ngāti Kiore, Patutoka, Ngāti Te Reinga, Te Mahurehure, Te Uri Kaiwhare, Ngāti Pakau, Ngāti Pou, Te Rauwawe, Ngāti Manawa, Kaitutae, Te Waiariki, Hokianga o nga Hapū Whānau, Mahuri Marae whānau
Representation: Watkins Law

Wai 2715
Claim name: Children of Te Taitokerau (Broughton) claim
Named claimant(s): Rosaria Hotere on behalf of herself, her whānau, and Te Uri o Hau
Representation: Oranganui Legal

Wai 2716
Claim name: Te Matapihi Housing Policy claim
Named claimant(s): Bonnie Jade Kake and Rau Hoskins on behalf of the trustees, delegates and representatives of Te Matapihi He Tirohanga Mō Te Iwi Trust and all Māori
Representation: Hockly Legal

Wai 2722
Claim name: Housing (McLean) claim
Named claimant(s): Rangi McLean for, and on behalf of, the Manurewa Marae
Representation: Kaupare Law

Wai 2732
Claim name: Housing Kaumatua (Takuira) claim
Named claimant(s): Richard Takuira also known as Ritchie Akapita, for himself and on behalf of the Takuira Whānau
Representation: Ranfurly Chambers

Wai 2739
Claim name: Housing Ex-Prisoners (Hetaraka) claim
Named claimant(s): Carmen Hetaraka on behalf of Ngātiwai ex-prisoners and Māori ex-prisoners generally
Representation: Manaia Legal

Wai 2742
Claim name: Housing Released Prisoners (Clark) claim
Named claimant(s): Georgina Clark
Representation: Bryce Lyall

Wai 2743
Claim name: Housing (Wikotu) claim
Named claimant(s): Annette Hale and Thomas Daniels on behalf of themselves, James Toopi Kokere Wikotu (deceased), and the Wikotu whānau of Te Ūpokorehe
Representation: Tamaki Legal

Wai 2745
Claim name: Unaffordable Housing (Munroe) claim
Named claimant(s): Debbie Munroe on behalf of Waka of Caring
Representation: Loader Legal

Wai 2747
Claim name: Housing (Kearns) Whānau claim
Named claimant(s): John Kearns and Maeva Kearns on behalf of the Kearns whānau
Representation: Tamaki Legal

Wai 2748
Claim name: Housing Tamaki ki Tonga (Tukua) claim
Named claimant(s): Jeff Haimona Tukua
Representation: Te Mata Law

Wai 2752
Claim name: State Housing (Henare and Connor) claim
Named claimant(s): Kristi Henare and Thelma Connor of Ngāti Hau on behalf of their whanau
Representation: Loader Legal

Wai 2757
Claim name: Tauranga Moana (Kururangi) Housing claim
Named claimant(s): Vanessa Kururangi
Representation: Michael Sharp

Wai 2758
Claim name: Housing (Edward Durie and others) claim
Named claimant(s): Edward Taihākurei Durie, Tamati Cairns, Danny Karatea Goddard, Dennis Emery, Christine Gray, Dr Gary Hook, Walter Rika, Makarena Phillips, Andrew Ginny Graham, Caine Darius Easthope, Hikairo Phillips, Paula Werohia, Fay Selby-Law, Derek Hauata King, Richard Tumarae, Nika Rua, Roimata Minhinnick and Diane Tuari on behalf of themselves and the following groups: the New Zealand Māori Council; Te Hirii Marae and Ngāti Rangatahi hapū; Christine Gray's whānau of Te Pou o Tainui (marae) and Kapumanawawhiti Hapū; and Ngāti Kahu te Pura Land Trust of Bethlehem, Tauranga.
Representation: Woodward Law

Wai 2759
Claim name: Housing (Cletus Maanu Paul and others) claim
Named claimant(s): Cletus Maanu Paul on behalf of himself, and the Mataatua District Māori Council; Raymond Hall, Titewhai Harawira, and John Tamihere on behalf of themselves and the Tamaki Makaurau District Māori Council; Desma Ratima on behalf of himself and the Takitimu District Māori Council; Diane Black and Rangi McLean on behalf of themselves, and the Tamaki ki Te Tonga District Māori Council; Rihari Dargaville on behalf of himself, and Te Tai Tokerau District Māori Council.
Representation: Phoenix Law

Wai 2761
Claim name: Mau Whānau claim
Named claimant(s): Tukuparaehe Mau on behalf of himself and the Mau whānau
Representation: Tamaki Legal

Wai 2762
Claim name: Ngāti Kahungungu (Tomlins) claim
Named claimant(s): Rangi Pakuru Tomlins
Representation: Te Mata Law

Wai 2805
Claim name: Housing Racism (Simpson) claim
Named claimant(s): Tahei Simpson, Keri Dell, and Waara Varley
Representation: Ranfurly Chambers

Wai 2807
Claim name: Te Rūnanga o Kirikiriroa claim
Named claimant(s): Rangiuia Riki on behalf of Te Rūnanga o Kirikiriroa Housing
Representation: Annette Sykes & Co

Wai 2813
Claim name: Housing (Tamihere and Hall) claim
Named claimant(s): John Tamihere, and Raymond Hall behalf of themselves, Te Whānau o Waipareira Trust, and the National Urban Māori Authority
Representation: Bryce Lyall

Wai 2868
Claim name: Housing (Hiini) claim
Named claimant(s): Kerry Pateriki Hamuera Hiini on behalf of the Kawiti whānau
Representation: Te Mata Law

Wai 2877
Claim name: Housing Policy and Services in Te Tai Rāwhiti (Crawford) claim
Named claimant(s): Elisabeth Lois Crawford
Representation: Te Mata Law

Wai 2878
Claim name: Housing for Urban Māori (Henare) claim
Named claimant(s): Veronica Henare supported by the Manukau Urban Māori Authority on behalf of themselves, their whānau, hapū, marae, iwi and Urban Māori of Aotearoa
Representation: Wackrow Panoho & Associates

Wai 2894
Claim name: Disability and Rehabilitation Support Services (Kingi) claim
Named claimant(s): Malcolm Kingi on behalf of himself and Ngāi Tahu ō Mōhaka Waikere
Representation: Tamaki Legal

Wai 2911
Claim name: Health Services and Outcomes (Clarke and McNab) claim
Named claimant(s): Kathrine Clarke and Lisa McNab on behalf of themselves and all Māori mothers and their tamariki and pēpi
Representation: Dixon & Co Lawyers

Wai 3011
Claim name: Mana Wāhine (Ormsby and Kurarangi) claim
Named claimant(s): Paula Ormsby and Cherie Kurarangi on behalf of the Wāhine Toa Chapter of the Mongrel Mob Kingdom and Priority Whānau including Māori women and their children associated with other gangs
Representation: Te Whenua Law

Wai 3013
Claim name: Housing (Holden) claim
Named claimant(s): Emily Imiri Kataraina Holden on behalf of herself, and Te Awa Pounamu Trust Board for Ngā Iwi Katoa o Te Tau Ihu and other iwi of the upper South Island
Representation: Self-represented

Interested Parties

Wai 144
Claim name: Ruapani Lands claim
Representation: Te Aro Law

Wai 375
Claim name: Whakarara Mountain claim
Representation: Te Aro Law

Wai 377
Claim name: Kaiwharawhara and Hutt Valley Lands claim
Representation: Phoenix Law

Wai 520
Claim name: Kerikeri Lands claim
Representation: Te Aro Law

Wai 523
Claim name: Kapiro Farm claim
Representation: Te Aro Law

Wai 1092
Claim name: Upokorehe claim
Representation: Te Aro Law

Wai 1567
Claim name: Ngaruroro River and Kohupatiki Marae claim
Representation: Phoenix Law

Wai 1656
Claim name: Adoption, Fostering and Wards of State (Beckett) claim
Representation: Phoenix Law

Wai 1661
Claim name: Ngāti Rua (Wood, Smith and Wood) claim
Representation: Mahony Horner Lawyers

Wai 1758
Claim name: Upokorehe Hapū Ngāti Raumoa Roimata Marae Trust claim
Representation: Te Aro Law

Wai 1787
Claim name: Rongopopoia Hapū claim
Representation: Te Aro Law

Wai 2389
Claim name: Ngā Ruamahue Hapū Lands and Taonga claim
Representation: Mahony Horner Lawyers

Wai 2875
Claim name: Mana Wāhine (Chaney) claim
Representation: Phoenix Law

Wai 2924
Claim name: Mana Wāhine (Tamati-Mullen Mack) claim
Representation: Phoenix Law

Wai 2974
Claim name: Oranga Tamariki Redacted (JF) claim
Representation: Phoenix Law

Wai 2975
Claim name: Oranga Tamariki Redacted (PA) claim
Representation: Phoenix Law

Wai 2994
Claim name: Mana Wāhine (KM) claim
Representation: Phoenix Law

Wai 2996
Claim name: Mana Wāhine (PA) claim
Representation: Phoenix Law

Wai 3012
Claim name: Mana Wāhine (Potiki) claim
Representation: Phoenix Law

Wai 3017
Claim name: Military Veterans (Ratima) claim
Representation: Phoenix Law

Individual party
Moana Party: Gerald Kiwara on behalf of himself and his whānau
Representation: Phoenix Law

The Crown

The Crown was represented by Luke Borthwick, Amy Bowden, Madeline Conway, Sam Eccles, Harry Graham, Matewai Tukapua, Isabella Wilson, (Crown Law Office), Jacki Cole (Barrister), and Rachael Schmidt-McCleave (Barrister).

Throughout, the Crown was supported by kaumātua Jo Harawira and Kura Moeahu.