

IN THE WAITANGI TRIBUNAL

Wai 3060

CONCERNING

the Treaty of Waitangi Act 1975

AND

Te Rau o te Tika: the Justice
System Kaupapa Inquiry

MEMORANDUM-DIRECTIONS OF JUDGE C M WAINWRIGHT
COMMISSIONING RESEARCH

19 December 2024

1. Pursuant to clause 5A of the second schedule of the Treaty of Waitangi Act 1975, I commission Associate Professor Antje Deckert and Professor Valmaine Toki to prepare a report on Māori and Criminal Courts c.2000 to the present for Te Rau o te Tika: the Justice System Kaupapa Inquiry (Wai 3060).
2. The report should examine Crown policies, practice, and legislation relevant to the criminal courts, and their impacts on adult Māori. The focus should be on the contemporary criminal courts, from approximately 2000 to the present. However, a brief historical overview from the 1950s to 2000 will be necessary.
3. The report will address the following research questions, where possible:

Historical background

- (a) What were the major historical developments in Crown legislation, policy, and practice relating to the criminal courts from approximately the 1950s to 2000? What key historical developments have contributed to the current system of criminal courts and to Māori experiences of criminal courts?

Māori participation and representation in legislation, policy, and practice relating to criminal courts

- (b) To what extent has the Crown consulted with Māori, and provided for Māori participation, in the development of major legislation, policy, and practice relating to criminal courts from approximately 2000 to the present? To what extent has the Crown partnered with Māori in the operation of criminal courts?
- (c) What is the extent of Māori representation among judges, lawyers, and Ministry of Justice staff who work in the criminal courts? Does the Ministry of Justice actively partner with Māori, iwi and hapū, and upskill internal Māori and non-Māori staff? Does the Ministry of Justice have policies or practices to promote internal Māori staff into leadership positions that influence criminal justice policy?
- (d) What is the nature of any Māori-specific roles and/or teams that have informed criminal justice legislation, policy, and practice within the Ministry of Justice? What have been the Crown's mechanisms for recruiting, retaining, and advancing Māori staff? What arrangements exist for facilitating and supporting the use of te reo Māori and/or the practice of tikanga by Ministry of Justice staff?
- (e) To what extent has the Crown developed and implemented policy or practice to promote Māori representation on juries that hear criminal cases? How much serious criminal behaviour is determined by jury trials, compared to judge-alone trials? What are the rates of conviction for Māori before jury trials compared to judge-alone trials?
- (f) What has been the Māori experience of the Clean Slate scheme under the Criminal Records Act 2004? Does the legislation allow Māori convicted of criminal offences to more successfully reintegrate into society compared to those who do not access the scheme? How does the experience of Māori compare to non-Māori? To what extent, if any, were Māori involved in the co-design and development of the Criminal Records

Act 2004? To what degree has the Three Strikes Sentencing Regime under the Sentencing and Parole Reform Act 2010 impacted Māori conviction rates?

- (g) To what extent do Māori defendants in criminal courts utilise defendant background reports under section 27 of the Sentencing Act 2002? Do defendants face any barriers when attempting to access these background reports? Do Māori defendants who utilise defendant background reports experience any variances in sentencing outcomes compared to those who do not? To what extent were Māori involved in the co-design and development of the Sentencing Act 2002, including its subsequent amendments?
- (h) To what extent, if any, have Māori been overrepresented (in comparison to non-Māori) in the criminal courts and sentencing? What factors, including social, psychological, or criminogenic, appear to influence Māori overrepresentation in the criminal courts? What difference, if any, is there between sentencing and conviction rates for Māori across regions, compared to in cities, and in provincial towns?
- (i) Do intergenerational experiences for some Māori within criminal courts influence Māori overrepresentation in criminal courts processes including, but not limited to, legal representation and alternative dispute resolution?
- (j) What restorative justice processes has the Crown introduced to offer alternatives to custodial sentences for Māori defendants?
- (k) To what degree does the frequency of out-of-court plea negotiations impact the role of criminal court proceedings? How does this impact Māori defendants and their conviction rates compared to non-Māori?
- (l) What contemporary legislative, policy, and strategic initiatives has the Crown developed in response to Māori overrepresentation in criminal courts? How has the Crown sought to improve the experience and outcomes of Māori in the criminal courts? Did these initiatives originate from the judiciary or Crown officials? If originating from the judiciary, how, and to what extent, has the Crown supported these initiatives? To what extent, if any, have Māori been involved in setting objectives and assessing the effectiveness of these initiatives?
- (m) How do factors such as addiction to alcohol or illegal drugs, or experiencing mental illness, affect the likelihood of serious offending and conviction for Māori in comparison to non-Māori? How, if at all, are these factors considered when defendants appear in criminal courts and in sentencing decisions? Are specialist courts, such as Te Kooti o Timatanga Hou (the New Beginnings Court) and the Alcohol and Other Drug Treatment Courts, providing adequate support for Māori? To what degree do the courts utilise health and social services to assist Māori defendants?
- (n) What are the experiences of Māori who are deaf, neurodivergent, impacted by violence, or those with addictions who interact with the criminal courts? Do the processes of the criminal courts adequately cater for diverse Māori identities?

Te reo me ona Tikanga Māori in the criminal courts

- (o) What legislation, policy, practice, or initiatives has the Crown implemented to incorporate or recognise te reo me ona tikanga Māori in the criminal courts, including but not limited to, court processes, support structures, and courthouse design? To what extent have Māori been involved in the design and delivery of such legislation or initiatives?
- (p) What guidance is there for the judiciary to implement initiatives such as 'Te Ao Mārama' that consider te reo me ona tikanga Māori when dealing with criminal matters? Did initiatives such as 'Te Ao Mārama' originate with the Crown or members of the judiciary?
- (q) To what extent does current legislation allow members of the judiciary to consider te reo me ona tikanga Māori when dealing with Māori defendants in criminal courts? To what degree has the judiciary independently incorporated or recognised te reo me ona tikanga Māori including, but not limited to, interpretation and translation services in criminal court proceedings, and to what extent is this supported by the Crown?

Crown monitoring and reviews

- (r) From 2000 to the present, what kinds of monitoring has the Crown undertaken for aspects of the criminal courts including, but not limited to, the efficacy of restorative justice processes, alternative custodial sentences, alternative courts, and the installation of te reo me ona tikanga Māori practices?
- (s) To what extent, if any, have Māori participated in the development of any such monitoring? Have the criminal courts been the subject of external monitoring by national or international organisations? How has the Crown responded to such monitoring?
- (t) How effective are the mechanisms of the Criminal Case Review Commission in rectifying potential miscarriages of justice for Māori submitters? How many cases are submitted to the Criminal Cases Review Commission per year? What proportion of submissions are made by Māori?

Crown monitoring and reviews

- (u) How does the Ministry of Justice record ethnicity and, in the case of Māori, iwi affiliation of individuals they come into contact with? How is that information subsequently used?
4. The commission will end on **10 July 2026**, at which time an electronic copy of the final report must be submitted to the Registrar for filing. Indexed electronic copies of any supporting documents or transcripts must be provided within four weeks of the commission end date. The report and any supporting documentation should be provided in Microsoft Word or PDF file format.
 5. The report may be received as evidence and the author may be cross-examined on it.

The Registrar is to send this direction to all those on the notification list for Wai 3060, Te Rau o te Tika: the Justice System inquiry.

He kupu ēnei nāku, otirā nā te Pae-Rukutātari nei.

DATED at Toronto this 19th day of December 2024

A handwritten signature in black ink, appearing to read 'Carrie Wainwright', with a period at the end.

Judge Carrie Wainwright
Presiding Officer

WAITANGI TRIBUNAL