

WAITANGI TRIBUNAL

Wai 3060

CONCERNING

the Treaty of Waitangi Act 1975

AND

Te Rau o te Tika: the Justice
System Inquiry

MEMORANDUM-DIRECTIONS
CONCERNING INQUIRY PLAN FOR TE TĀHŪ O TE RAU

19 December 2024

Introduction

1. This document:

- (a) talks about He Huanga o te Tika (our report for Te Tūāpapa o te Tika) and its implications for the balance of Te Rau o te Tika;
- (b) proposes an inquiry plan;
- (c) sets out our current thinking on how and when we will hold events to hear claimants' evidence about their dealings with the justice system and how it has affected them; and
- (d) proposes a date and time for a judicial conference to discuss with parties the broad plan outlined in this memorandum-directions.

Background

2. In directions dated 19 April 2022, I confirmed that Te Rau o te Tika would progress in three stages (Wai 3060, #2.5.7):

- (a) **Stage one - Whakatika ki Runga:** an inquiry into Crown funding of claimants in Waitangi Tribunal processes.
- (b) **Stage two - Te Tūāpapa o te Tika:** an inquiry to (a) inform and extend our understandings of the foundation principles of tikanga and justice to be applied later in the inquiry; and (b) help us understand how best to run an inquiry in a way that conforms with tikanga.
- (c) **Stage three - Te Tāhū o te Rau:** an inquiry into the criminal and civil justice issues in segments called heke:

Criminal justice

Heke #1: Police

Heke #2: Operation of the criminal courts, including criminal legal aid

Heke #3: Prisons (including remand) and non-custodial sentencing

Civil justice

Heke #4: Civil litigation in the District Court and senior courts, including civil legal aid

Heke #5: Family Court

Heke #6: Environment Court

Heke #7: Māori Land Court

3. In February 2023, we released our Whakatika ki Runga report. The Crown subsequently responded positively to our recommendations (see Wai 3060, #3.2.219 & Wai 3060, #3.2.230). We have not received a recent update, but we presume that until we are informed otherwise, the Crown is continuing to work with claimants on implementing the recommendations. The Tribunal's work on stage one is done.

4. Between May and June 2023, we held four wānanga in Te Tūāpapa o te Tika. On 19 December 2024, we released our report on tikanga, He Huanga o te Tika. This concluded stage two of Te Rau o te Tika.
5. I have been saying for a while (see Wai 3060, #2.6.22; Wai 3060, #2.6.25; Wai 3060, #2.6.27; Wai 3060, #2.6.30 & Wai 3060, #2.6.31) that once we had released this report, and in the light of what we had learned, we would issue a memorandum-directions on our approach to the balance of the inquiry. Here it is.
6. I have also said that we thought we would conduct hearings on marae for claimants' evidence about their encounters with the justice system. This would happen while work on the research programme is carrying on. We remain of this view. In this document we disclose in outline when and (broadly) where that is likely to happen.

Timing of research projects

7. First, though, I can update you on progress in the research programme.
8. We confirmed the programme on 25 October 2024, describing the eight research reports that the Tribunal would commission over the coming months into early 2025. This is underway. We can signal now that the forecast delays in the delivery of research (Wai 3060, #2.6.27 at [6] & Wai 3060, #2.6.32 at [3]) will be less severe. Expectations now are that all research will be in by late 2026.
9. Finally, we have communicated with you about the researchers whose names have been confirmed – so far six out of eight commissionees. You will hear further about the remaining two.

Our learnings from Te Tūāpapa o te Tika

10. As He Huanga explains, the use by Māori of tikanga that relate to behaviours that breach community norms are:
 - (a) grounded in community and whakapapa;
 - (b) designed to enhance the mana of all;
 - (c) focused on the group, collective responsibility, and consensus about an appropriate kind and level of response.
11. While our inquiry process is different in kind from tikanga responses to wrongdoing, there are some elements that we want to try and replicate. We want to approach our inquiry into claims as much as possible in a way that looks at the individual and their experience as involving their whānau and hapū, making the experience of the wider kin group also relevant. We also want the experience of participating in the inquiry to enhance the mana of all concerned.

12. To the extent possible – unfortunately navigating the usual constraints of time and money – we want to allow witnesses to give their evidence on marae with whānau/hapū support. As with our wānanga in 2023, we aim to hold them in places that have a good geographical spread. This is less than the ideal of providing for all witnesses to give evidence on their own marae. To do this is beyond our logistical and budget capacity at the present time.
13. Thus, we will aim to conduct our inquiry using process that is tika, that promotes ora, and that will lead to ea – at least while matters are under the Tribunal’s purview. Ultimately, the Tribunal delivers its recommendations to the Crown, and beyond that has no control over what happens next.
14. For the conduct of Te Rau o te Tika, though, our commitment to tikanga will involve the parties and the Tribunal working co-operatively to make certain choices. At the very least, we will choose to avoid confrontation and stress wherever possible. We expect that witnesses will have experienced trauma. Where that is the case, we do not want their trauma to be exacerbated by what we do. On the contrary, we want to try to be part of the healing and regeneration that many will need.
15. We will continue to think about and work on possibilities ourselves, but we are also open to parties’ suggestions about how these goals can best be achieved. We will include it as an agenda item on the judicial conference that will follow (see below).

Overview of proposed inquiry plan for Te Tāhū o te Rau

16. The timing of what comes next look broadly like this:

Year	Activity
2025	a) advance the criminal justice research programme; and b) hear evidence of encounters with the criminal justice system on marae.
2026	a) complete the criminal justice research programme; and b) commence the civil justice research programme.
2027	a) hear technical and other outstanding evidence on criminal justice issues (which might, for instance, include the evidence of personnel involved in police or prison work); and b) hear claimant witnesses’ evidence on their experiences with the administration of civil justice, probably on marae (this can be decided closer to the time, in consultation with parties).
2028	a) complete the civil justice research programme; and b) hear technical and other outstanding evidence on civil justice issues.
2029 onwards	a) issue reports or a report on the topics covered. We think it is too soon to be definitive about how we will approach the reporting phase of the inquiry.

Claimants' evidence on marae

17. We propose to hold events on marae where people can give their kōrero about experiences in the justice system.

Parties in the inquiry

18. On 19 April 2022, the Tribunal invited all those who wished to participate in the inquiry, or any part of the inquiry, to file a memorandum indicating their intention to participate. The Tribunal noted there would be opportunity for pleadings for the balance of the inquiry (beyond Whakatika ki Runga) to be amended in the future (Wai 3060, #2.5.7 at [28]).

19. On 27 May 2022, the Tribunal released a list of eligible claims with claimant status and a list of interested parties in Whakatika ki Runga (Wai 3060, #2.5.11(a) & (b)). On 13 July 2022, we updated the list of interested parties (Wai 3060, #2.5.15(c)) and on 6 October 2023, we released a preliminary list of 216 claims that had been identified as containing allegations relating to criminal justice issues (Wai 3060, #2.6.25(b)).

20. Counsel were invited to let us know by 31 October 2023 if any claim had been inadvertently omitted from the criminal justice stage of Te Tāhū o te Rau (Wai 3060, #2.6.25 at [49]).

21. The Tribunal's registrarial team is updating the list of claims and interested parties eligible to participate in the criminal justice stage of Te Tāhū o te Rau, which will begin with the evidential hearings on marae. We expect this list to be circulated early 2025.

Evidential hearings on marae

22. First and foremost, the kōrero will be that of claimants and their whānau who connect to the claims on the list of interested parties and claimants that is now being updated. The kōrero in this first phase are those related to heke #1, #2 and #3 – police, criminal courts, and prisons.

23. Our thinking about this is that speakers' personal accounts will not be subject to any questioning of a kind that resembles cross-examination. That means that although questions may be asked, those questions would be only to elicit more information on topics being canvassed, or clarification of points made.

24. We envisage that the hearings will be more informal than usual. They will feel more like a hui than a hearing. Witnesses will be encouraged to tell their story in whatever format or presentation – potentially, for example, as part of a whānau group – that is most comfortable for them. Counsel will not be called on to make submissions. Evidence need not be in writing. There will be seating in the whare but not tables. The panel will sit together like we did at the tūāpapa wānanga and will ask speakers questions. Counsel and other claimants will also arrange themselves in this manner. Questions from counsel or others will be of the kind described – eliciting more information about a topic or seeking clarity.

25. We think that probably the floor should not be open to all attendees, because it would be difficult to maintain a kaupapa thread. However, we are open to discussion on this point. It was also suggested that others like workers in the justice system might be permitted to kōrero. On the whole, we think it preferable that the focus is on claimants and their whānau, and their experiences. If some of those people are also workers in the system that could perhaps also be accommodated. We invite opinions on these questions when we come to the judicial conference.
26. To keep speakers on track in the tūāpapa wānanga, we produced a guide for kōrero that was projected on a screen. Counsel also played a useful role here, briefing speakers and directing them to the kaupapa. How should this be managed in these marae hearings? We think it will be helpful if a Tribunal member plays the role of convenor or MC, with a loose mandate to keep the kōrero directed to the issues in heke #1, #2, and #3. We do not want these events to provide a platform for those who for example might want to advance tangential views on politics or conspiracies.
27. We will have the hui transcribed, and the hearings may be viewed on live stream. Participation will be limited to those in the room however. Or that is our preference at this stage anyway, conscious as we are of the power of harnessing the mauri who together make up the marea on the day.
28. We are conscious of the need to look after witnesses, to ensure that everyone feels and is safe. We also want to make provision for participation by whānau whai kaha. To that end, it is our intention that sign language interpreters will attend. If other measures are required to ensure safety and accessibility, please give us your thoughts on what those might look like.

Evidential status of kōrero on marae

29. We propose to use what we hear in the marae hearings when we come to report. In cases where the Crown or other parties consider that the kōrero strays into what might be characterised as false testimony, they may call evidence about that in subsequent hearings. They may also make submissions that put the evidence in a wider or different context.

Timing

30. The timing of the hearings on marae is dictated by the way the funding falls. It goes across two financial years (2024/25 and 2025/26), and the end of the financial year is 30 June. We think it preferable to hold the events relatively close to each other. Accordingly, we are looking at four two-day hearings in the months around 30 June 2025 – that is, one week with two locations in May-June 2025, and one week with two locations July-September 2025.

31. The idea is that two hearings will be held in a week, one on Monday-Tuesday and one Thursday-Friday. There will be travel to the marae on Sunday and Wednesday.

Where?

32. To give whānau across the motu a reasonable chance of travelling to one of the hui, and to enable the Tribunal to relocate on one day in the middle of the week, we want to hold the hearings at places that are spread across the motu, but the two marae in each week must be no further than four hours' travel apart to transport our audio-visual equipment. Currently we are looking for a little more flexibility on the four-hour rule for these events.

33. Venues and timing might look like this:

Week	When	Hearing	Where
1	May – June 2025	1	Whangārei
		2	Hamilton
2	July – September 2025	3	Gisborne
		4	Wellington

34. We are also amenable to a hearing being held at a corrections facility, to enable those in prison to attend in person. The feasibility of doing this is thus far unclear.

35. It is also conceivable that Corrections could permit low-security prisoners to attend a hearing on a marae, but this would of course also be subject to the views of the hau kāinga.

Input

36. This memorandum sets out our views about inquiry planning as points of discussion. Nothing is fixed. On all these matters we invite your views at the judicial conference. If parties have concerns about or aspirations for the hearings on marae, they may make submissions for consideration at the judicial conference.

Participation of those in prison

Background

37. In directions dated 14 June 2024, the Tribunal said it intended to work with parties to establish a protocol on how those in prison will participate in Te Tāhū o te Rau. To this end I invited claimant counsel to file a joint memorandum on what accommodations the Tribunal should seek from the Department of Corrections (Wai 3060, #2.6.31).

38. On 29 July 2024, claimant counsel filed a memorandum outlining claimants' preference as to the participation of those in prison (Wai 3060, #3.2.282).

39. On 31 October 2024, Crown counsel filed a memorandum outlining high level preliminary advice from Corrections concerning the participation of those in prison (Wai 3060, #3.2.287).

Process to develop a protocol

40. Tribunal staff are currently preparing a letter to go to Corrections. We are expecting that a meeting may ensue aimed at working out what is possible to give persons in custody meaningful engagement in our processes. The meeting would involve senior Waitangi Tribunal personnel and Corrections officials.

Other planning

Te Rōpū Mōhiohio

41. In directions dated 25 October 2024, I asked the Crown and claimants to nominate representatives for the research working group Te Rōpū Mōhiohio whose ask is to facilitate access to Crown documents and data during the research phase (Wai 3060, #2.6.32).
42. On 15 November 2024, the Crown nominated two representatives: (a) Lauren Keenan (Manager, Te Kāhui Rau Rikiriki); and (b) Kate Stone (Principal Advisor, Te Kāhui Rau Rikiriki) (Wai 3060, #3.2.288).
43. On 18 November 2024, Tamaki Legal nominated two representatives: (a) Violet Nathan (a named claimant for Wai 2217); and (b) William McMaster (a solicitor at Tamaki Legal) (Wai 3060, #3.2.289).
44. I thank the parties for these nominations. If parties wish to nominate more representatives, they should do so by **5 pm, Monday 13 January 2025**.

Possible joint sitting

45. In directions dated 6 October 2023, I noted the possibility of a joint sitting with the Mana Wāhine Kaupapa Inquiry (Wai 2700). That inquiry has commissioned research reports that concern Māori women and justice system-related issues (Wai 3060, #2.6.25 at [40] – [41]).
46. The Mana Wāhine Inquiry has made no decisions as yet about a hearing schedule. The two inquiries will continue to liaise and keep parties updated on this topic.

Next steps

47. A judicial conference to canvass all these matters will be held by AVL at **11 am, Friday 21 February 2025**
48. Parties who wish to file submissions should do so by **5 pm, Wednesday 12 February 2025**.

49. I am conscious that the topic of amending pleadings has been parked for a long time. I will not call on parties to finalise pleadings until after the research phase, possibly around the end of 2026. The nature of the pleadings we might require is a topic that will also be further refined closer to that time.

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.

DATED at Toronto, Canada this 19th day of December 2024



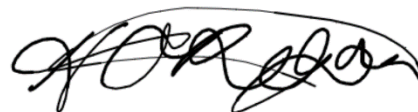
Judge Carrie Wainwright
Presiding Officer
WAITANGI TRIBUNAL



Dr Ruakere Hond
Tribunal Member
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Dr Paul Hamer
Tribunal Member
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Dr Hana O'Regan
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