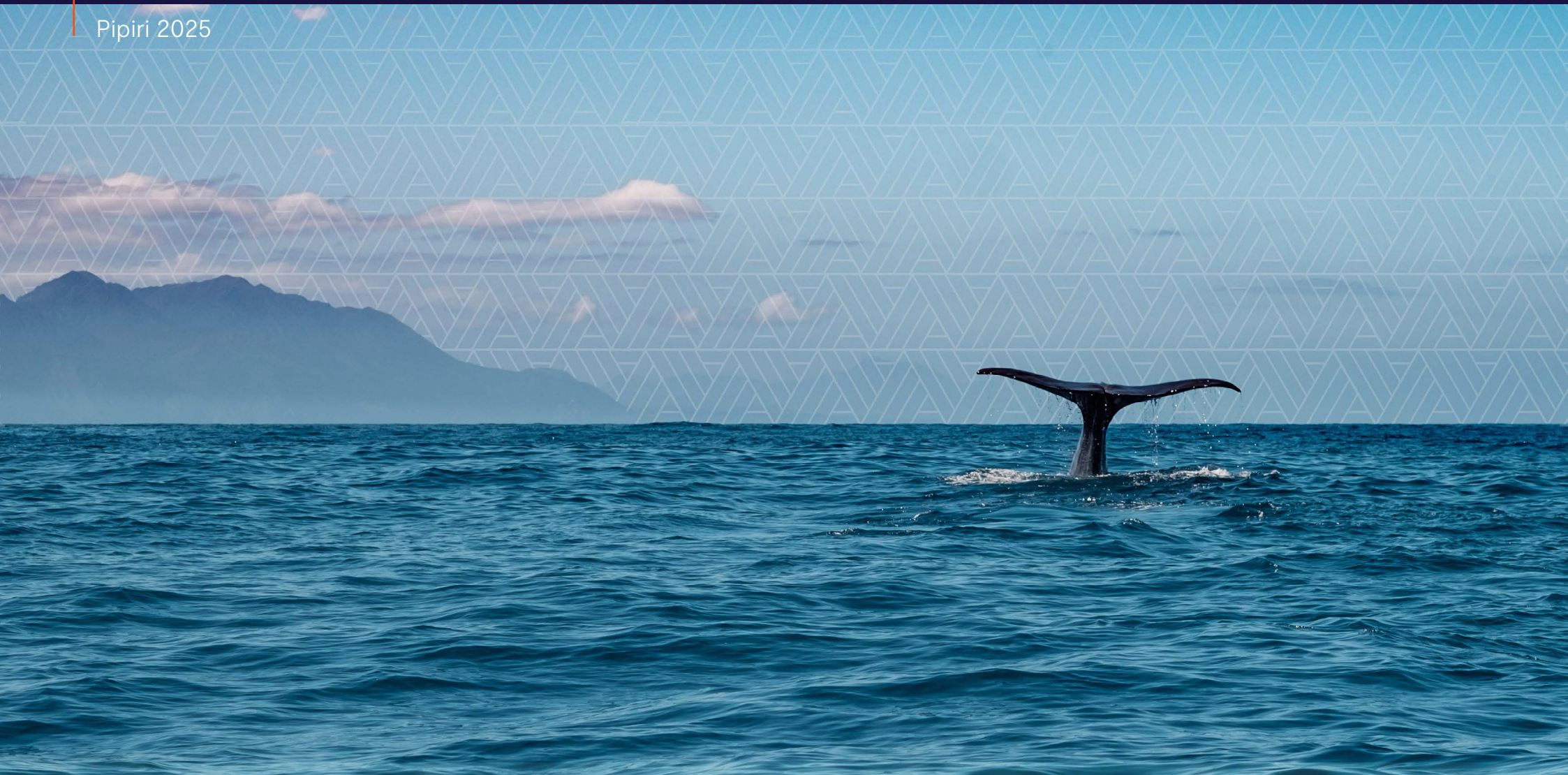
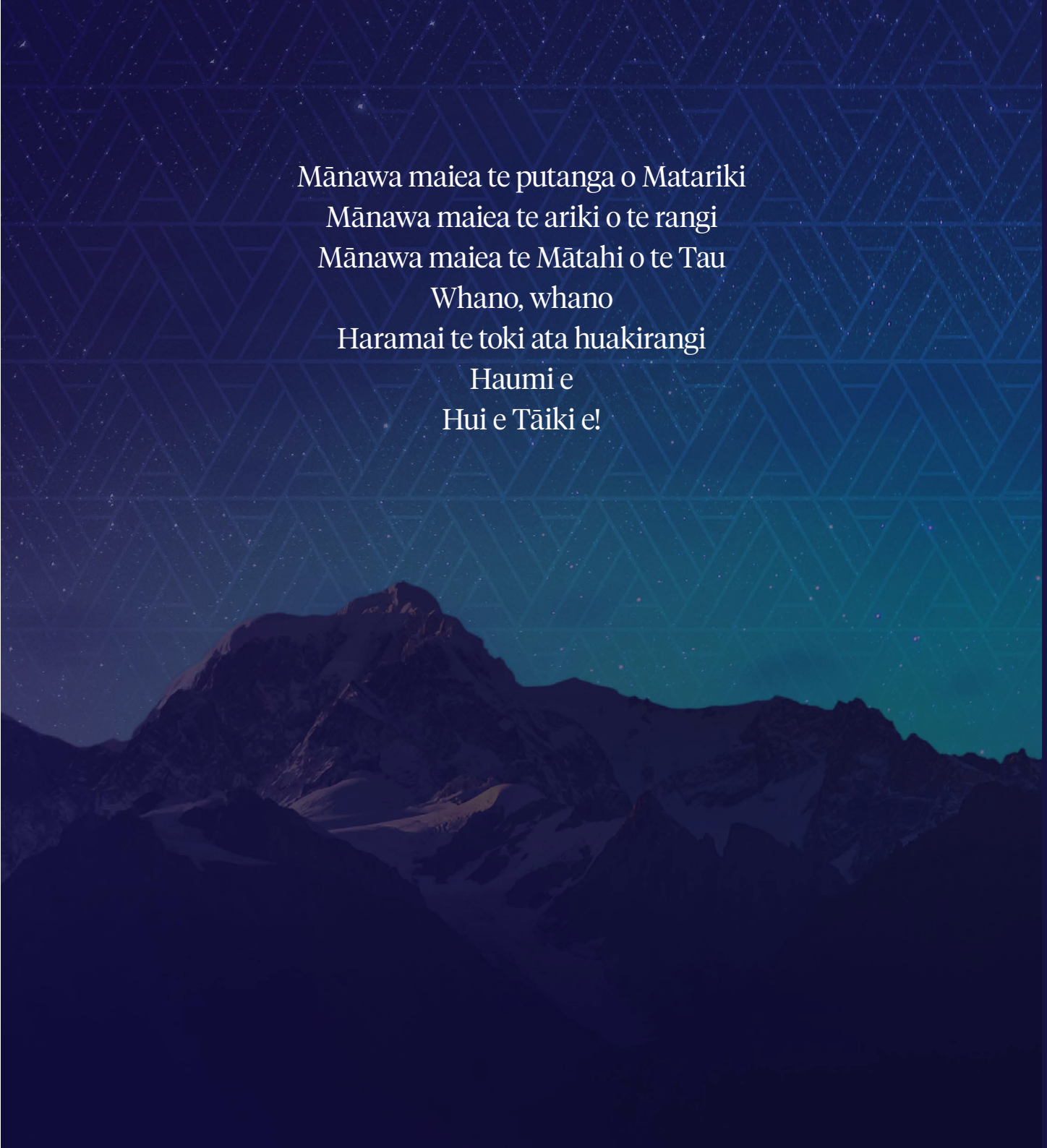
chapman tripp

Te Ao Māori

Trends & Insights

Pipiri 2025





Mānawa maiea te putanga o Matariki
Mānawa maiea te ariki o te rangi
Mānawa maiea te Mātahi o te Tau
Whano, whano
Haramai te toki ata huakirangi
Haumi e
Hui e Tāiki e!

Contents

Te Iwa o Matariki

Widely regarded as the beginning of the Māori new year, Matariki is a time to reflect on the year that has been and look to the horizon for what is to come.

The Matariki cluster is made up of nine stars, or Te Iwa o Matariki.

Puanga

Puanga (Puaka) appears in the sky just before Matariki and serves as a precursor for tribes that can't see Matariki in the East. For some, Puanga is the key star to celebrate the new year.

Pōhutukawa

Associated with those that have passed on since the last rising of Matariki.

Waitī

Associated with all fresh water bodies and the food sources that are sustained by those waters.

Waitā

Associated with the ocean, and food sources within it.

Waipuna-ā-rangi

Associated with the rain.

Ururangi

Associated with the winds.

Tupuānuku

Associated with everything that grows within the soil to be harvested or gathered for food.

Tupuārangi

Associated with everything that grows up in the trees: fruits, berries and birds.

Hiwa-i-te-rangi

Associated with granting our wishes and realising our aspirations for the coming year.

Matariki

The main star in the cluster. Connected to wellbeing and welcoming in the New Year.

Tikanga as a source of rights and claims in rangatiratanga

Kua kaheko te tuna i roto i aku ringaringa / the eel has slipped through my hands.

Waitī ki runga. Waitī ki raro, e rere nei ō wai hei manapou mō te whenua, hei oranga mō te tangata, hei kete kai mā te iwi. Kōriporipo tonu nei te ia o te awa, māreparepa ana ngā roto, kōrengarenga te puna a Tāne-te-waiora, he koiorā!

Over the past 150 years, the place of tikanga in the law has ebbed and flowed[1] but the underlying current, which reached the shore in *Takamore v Clarke*, has been from whether tikanga is relevant in a particular case to tikanga as a source of rights in Aotearoa law.[2]

Channels of tikanga in the law

In *He Poutama*, the Law Commission stated *Takamore v Clarke* "marked a significant step in the relationship between tikanga and the common law".[3] Since that decision, a number of key decisions, including *Ellis*, *Ngāti Whātua Ōrākei Trust (No 4)*, and *Mercury*, have shaped the stream of tikanga to split into many different channels, including:

01 Tikanga is the first law of Aotearoa[4]

02 Tikanga is one of the values of the common law[5]

03 Tikanga is recognised as a separate legal framework[6]

04 Tikanga can even be the law sometimes[7]

05 Tikanga frameworks can be adopted to address the status of tikanga Māori in the law.[8]

Shift from 'whether' tikanga is relevant to 'how' tikanga is relevant

Following *He Poutama* and decisions such as *Ellis*, the courts' focus has shifted from whether tikanga is relevant to considering *how* tikanga is relevant in a case. This evolution in the courts' focus has been reflected in a number of recent decisions.

Earlier this year, Isac J stated:[9]

> "My own experience suggests that in their enthusiasm to embrace tikanga, some parties have overlooked the need to consider the degree of the connection between the issues before the court and tikanga Māori, and the possible impacts of raising the issue on tikanga itself."

In the context of a trustee dispute, Harvey J found that tikanga was relevant in the ownership and whakapapa, management of whenua, and dispute resolution contexts.[10] However, he found that the argument led by counsel that tikanga could displace judgment was not sustainable, and in fact no tikanga could support the argument advanced by the applicant.[11]

Finally, in *Stafford*, counsel presented Edwards J with arguments on tikanga both from a perspective of tikanga as a lens through which evidence or arguments are to be assessed and tikanga as substantive law.[12] Edwards J also found that although the parties had provided her with relevant tikanga concepts, she had received "little evidence on how they might apply to the specific circumstances of the case".[13]

Claims in rangatiratanga

Rather than claims in customary rights, Te Tiriti o Waitangi or tikanga, iwi, pan-Māori entities, and post-settlement government entities (PSGEs) have filed applications seeking recognition of their rangatiratanga in relation to wai māori.

For example, the Ngāi Tahu freshwater litigation that was heard in the High Court in Ōtautahi earlier this year centres on the claim that Ngāi Tahu had and continues to exercise Ngāi Tahu rangatiratanga over wai māori.[14]

The outcome of the Ngāi Tahu proceeding will be significant as it has the potential to expand the current status of tikanga as a source of rights in the law.

Takeaways

The comments from Isac, Harvey and Edwards JJ emphasise the importance, when asserting tikanga as a source of rights, of laying out evidence to strengthen the link between tikanga and *how* tikanga supports the argument advanced. Therefore, when advancing a claim that is supported by tikanga, applicants and their lawyers will need to articulate how tikanga is relevant to claims, and provide evidence in the form of pūkenga like in *Ellis*, or from kaumātua in affidavits to support these assertions. When there is evidence on how tikanga might apply to the specific circumstances of a case, claims in tikanga as a source of rights are more likely to succeed.

Recent claims in rangatiratanga have the potential to expand the status of tikanga as a source of rights, and the meaning of rangatiratanga, in the law.

1. Natalie Coates "How can we protect the integrity of tikanga in the lex Aotearoa endeavour? Inaugural Downie Stewart Law and Society lecture 2022" (2022) 17 Otago LR 223.
2. *Takamore v Clarke* [2012] NZSC 116.
3. Te Aka Matua o te Ture | New Zealand Law Commission, He Poutama NZLC SP24, September 2023 at [5.38].
4. *Peter Ellis v R (Continuance)* [2022] NZSC 114 at [22].
5. *Takamore v Clarke* [2012] NZSC 116 at [94].
6. *Ngāti Whātua Ōrākei Trust v Attorney-General (No 4)* [2022] NZHC 843 at [354].
7. *Mercury NZ Limited v The Waitangi Tribunal* [2021] NZHC 654, [2021] 2 NZLR 142 at [103].
8. *Wairarapa Moana Ki Pouākani Inc v Mercury NZ Ltd* [2022] NZSC 142 at [74].
9. *Hata v Attorney-General* [2025] NZHC 519 at [163].
10. *Doney v Adlam (No 2)* [2023] NZHC 363 at [81].
11. *Doney v Adlam (No 2)* [2023] NZHC 363 at [81], [94], [102]–[103] and [106].
12. *Stafford v Attorney-General* [2024] NZHC 3110 at [178].
13. *Stafford v Attorney-General* [2024] NZHC 3110 at [183].
14. *Tau & Ors v The Attorney-General* CIV-2020-409-534 [pending judgment]. [Disclaimer: Chapman Tripp is acting for Ngāi Tahu]. See also Link 1; Link 2; and Link 3.

Case law timeline

1987
HIGH COURT

Huakina Development Trust v Waikato Valley Authority [1987] 2 NZLR 188 (HC)

"There can be no doubt that the Treaty is part of the fabric of New Zealand society."

2003
COURT OF APPEAL

Attorney-General v Ngāti Apa [2003] 3 NZLR 643 (CA)

Tikanga Māori is applicable law under English Laws Act 1858.

Maori customary land is an "ingredient" of the common law of New Zealand.

2012
SUPREME COURT

Takamore v Clarke [2012] NZSC 116

"Māori custom according to tikanga" forms "part of the values of the New Zealand common law."

2017
SUPREME COURT

Proprietors of Wakatū v Attorney-General [2017] NZSC 17, [2017] 1 NZLR 423

The Crown owed legally enforceable fiduciary duties to the Māori customary owners in acting on their behalf to create reserves as part of a land sale in 1845.

2018
SUPREME COURT

Ngāti Whātua Ōrākei Trust v Attorney-General [2018] NZSC 84, [2019] 1 NZLR 1156

"Rights and interests according to tikanga may be legal rights recognised by the common law... Where claims of right or legal interest are made in our constitutional order, it is the function of the courts to determine them."

2020
HIGH COURT

Ngāti Maru Trust v Ngāti Whātua Ōrākei [2020] NZHC 2768, [2021] NZRMA 179

Resource management decision-makers should be "able to identify, involve and provide for iwi and their mana whenua in accordance with mātauranga Māori and tikanga Māori."

2021
HIGH COURT

Re Edwards (Te Whakatōhea (No. 2)) [2021] NZHC 1025

The courts are to engage in a "factual assessment that will be heavily influenced by the views of those who are experts in tikanga."

SUPREME COURT

Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board [2020] NZCA 86, [2020] NZRMA 248

"The tikanga Māori that defines and governs the interests of tangata whenua in the taonga protected by the Treaty is an integral strand of the common law of New Zealand."

HIGH COURT

Re Ngati Pahauwera [2021] NZHC 3599

"The concept of holding in accordance with tikanga and exclusive use and occupation in accordance with that tikanga are... fundamentally different to European property rights."

HIGH COURT

Sweeney v The Prison Manager, Spring Hill Corrections Facility [2021] NZHC 181, [2021] 2 NZLR 27

"Where material to a case, the Courts can, and may have an obligation to, recognise and uphold the values of tikanga Māori in applying the law of judicial review and granting remedies."

HIGH COURT

Ngawaka v Ngāti Rehua-Ngātiwai ki Aotea Trust Board (No 2) [2021] NZHC 291, [2021] 2 NZLR 1

"What is recognised by a court cannot change the underlying fact of tikanga determined by the hapū or iwi, exercising their rangatiratanga."

HIGH COURT

Mercury NZ Limited v The Waitangi Tribunal [2021] NZHC 654

"...the statutory provisions to be applied by the Tribunal do not give it a discretion to make decisions that are inconsistent with tikanga, or which would involve a contemporary breach of the principles of the Treaty."

"In some situations, tikanga will *be* the law, rather than merely being the source of it." [103]

2022

SUPREME

Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board and Ors [2021] NZSC 127

A "broad and generous" interpretation should be taken of statutory Treaty provisions. Tikanga Māori are "applicable law."

HIGH COURT

Ngāti Whātua Ōrākei Trust v Attorney-General [2022] NZHC 843

"Neither the Crown nor parliament determines mana whenua or ahi kā roa."

Tikanga is a "separate legal framework".

SUPREME

Peter Ellis v R [2022] NZSC 114

"... tikanga will need to be considered where it is relevant to the circumstances of the case. ... In some cases, tikanga and its principles may be controlling."

SUPREME COURT

Wairarapa Moana ki Pouākani Inc v Mercury NZ Ltd [2022] NZSC 142

"...mana whenua need not be the controlling tikanga because other tikanga principles were also in play."

MĀORI LAND COURT

Pokere v Bodger – Ōuri 1A3 (2022) 459 Aotea MB 210 (459 AOT 210)

The first fully bilingual judgment in te reo Māori and te reo Pākehā.

2023

HIGH COURT

Calvin Tui Hart and others v DOC and Te Runanga o Ngāi Tahu [2023] NZHC 1011

The decision of DOC to deliver whale jawbones to one iwi, where another iwi contested that decision, was unlawful: "the question of any allocation needs to be resolved by an iwi-to-iwi process, undertaken consistently with the principles of tikanga."

2024

HIGH COURT

Stafford v Attorney-General [2024] NZHC 3110 at [174] and [831]

Tikanga was relevant to the finding that the Crown had breached its fiduciary obligations to Māori regarding the Tenths.

SUPREME COURT

Nikora v Kruger [2024] NZSC 130, [2024] 1 NZLR 608 at [87] and [95].

The Court found that the Māori Land Court has jurisdiction over a "trust constituted in respect of any general land owned by Māori" as stated in s 236(1)(c) of Te Ture Whenua Māori Act 1993. The Court found that included PSGE trusts too. This decision overturned the Court of Appeal's decision *Kruger v Nikora*.

HIGH COURT

Doney v Adlam (No 2) [2023] NZHC 363 at [75].

"The experience for Māori is that tikanga has been applied in the attempted resolution of disputes both before and after 1840. In more recent times, the senior courts have also acknowledged the increasing relevance of tikanga."

2025

HIGH COURT

Hata v Attorney-General [2025] NZHC 519 at [120].

The Court identified key themes from the development of tikanga in the law:

- The proper application of tikanga is context dependent.
- The principles of tikanga form a connected weave of values and customs. In a given situation, several principles will usually be relevant, and may be in tension. Each principle needs to be weighed. This is one reason why context is so important.
- Tikanga informs not only the substance of a decision but is also the process by which it is made. Resort to the court to determine issues of tikanga may itself be inconsistent with tikanga.
- The courts need to take care not to impair the operation of tikanga as a system of law and custom in its own right.

Mai i te moana ki te whenua – major legislative reform

E kore tātau e mōhio ki te waitohu nui o te wai kia mimiti rawa te puna

– Te Wharehuia Milroy

Sweeping legislative reform is underway that will have wide-ranging impacts from the moana to the roto, and the awa, ngāhere and whenua in between. We provide a high-level summary.

Environmental reform

Replacement of the Resource Management Act 1991

Two Bills to replace the Resource Management Act 1991 are expected to be introduced later this year for passage by mid-2026:

- the Natural Environment Act will focus on the use, protection, and enhancement of our land, air, freshwater, coastal and marine water, and other natural resources, and
- the Planning Act will focus on land-use planning to enable development and infrastructure.

The new legislation may narrow the scope of the resource management system and the effects it controls. This may narrow how and to what extent cultural effects are considered in decision-making.

RMA (Consenting and Other System Changes) Amendment Bill

This Bill seeks to introduce changes to take effect before the RMA's replacement. These include:

- specifying default maximum timeframes for consent processing and establishing default consent durations for renewable energy and infrastructure consents
- making implementation of the medium density residential standards (MDRS) optional for councils and providing more flexible planning processes to support housing growth
- clarifying the relationship between the RMA and the Fisheries Act 1996 to balance marine protection with fishing rights
- providing more tools to deal with natural hazards and emergency events in order to improve decision-making and efficiency, and
- increasing penalties for noncompliance, removing insurance against penalties, enabling cost recovery for councils and the consideration of an applicant's history in consent decisions.

Changes to national direction

The Government is proposing to amend several national direction instruments in advance of the Acts to replace the RMA. Proposals include:

- creating a new National Policy Statement on Infrastructure (NPS-I)
- introducing a new NPS-NH to manage natural hazards
- amending the NPS for renewable energy generation (NPS-REG), the NPS for electricity transmission (proposed to be renamed the NPS for Electricity Networks, NPS-EN), the National Environmental Standard for electricity transmission activities (amended to NES-ENA) and the NES for telecommunication facilities (NES-TF)
- introducing a new NESs for granny flats (NES-GF) and papakāinga (NES-P).

Changes have also been announced for the primary sector, including with respect to the National Policy Statement for Freshwater Management 2020 and the National Environmental Standards for Freshwater. And a fourth package, yet to be released as this was written, will propose new and amended direction to support the Government's Going for Housing Growth policy.

Submissions on all packages will close on **27 July 2025**.

Fast-track application process

The Fast-track Approvals Act 2024 aims to streamline and expedite the approval process by offering a one-stop-shop. The purpose of the act is to facilitate the delivery of infrastructure and development projects with significant national or regional significance.

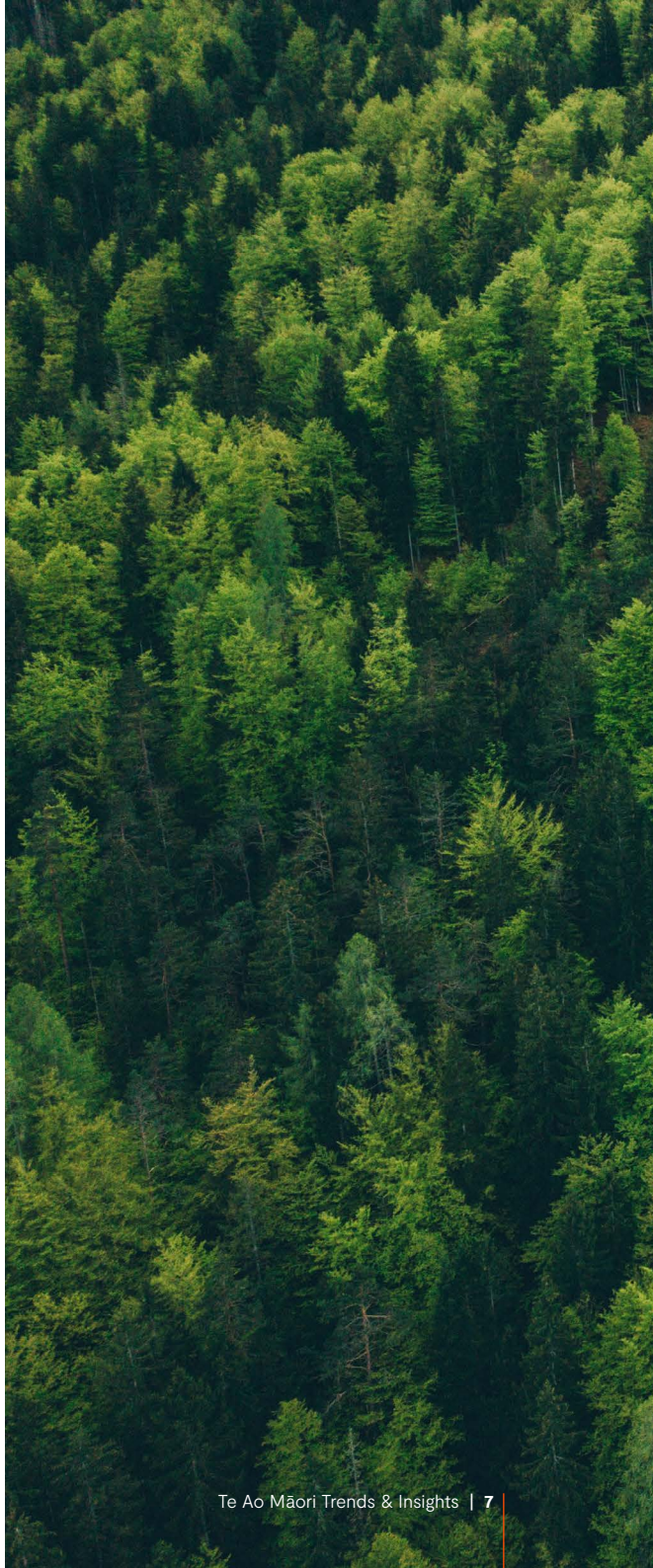
Forestry

Major changes are proposed to the National Environmental Standard for Commercial Forestry (NES-CF). They include:

- amending regulation 6(1)(a) so that councils can impose conditions more stringent than the NES-CF on an exceptions-only basis, where it can be demonstrated that the greater stringency is required to meet a specific localised risk
- removing the wide discretion councils currently have through regulation 6(4A) to depart from national criteria in relation to afforestation
- removing regulation 10A which requires an afforestation management plan for all afforestation activities as a permitted activity condition
- amending regulation 11(4) relating to calculations for wilding tree risk
- amending Subpart 6 – Harvesting relating to slash mobilisation, and
- remove regulation 77A that requires replanting plans.

These amendments follow an announcement of proposed policy changes in December 2024 to limit how much farmland is converted to exotic forest and registered in the Emissions Trading Scheme (ETS).

Certain types of Māori land have an exemption under the moratorium policy, proposed to come into effect in October this year, and there are no limits on ETS registrations on indigenous forest.



Te Ture Whenua Maori Act 1993 Reform

The Government has recently begun consultation on potential changes to Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993). The proposed changes are intended to ensure the Act is working as it should, and to promote the development and retention of whenua Māori. They can be themed for ease of reference.

Court processes
Create a central register of owners/trustees; expand the Act's jurisdiction and clarify its status: include Part 1/67 General land in TTWM Act; improve governance practices for investigations into the affairs of Māori incorporations; enable the Registrar of the Court to file for review of trusts.

Appointed agents
Widen the scope of land to which the Court has jurisdiction to appoint agents; widen the purposes for which the Court may appoint agents; provide for temporary governance on ungoverned whenua Māori in specific circumstances.

Succession
Enable the Court, on application by a beneficiary under a will or an intestacy, to vest a freehold interest in General land in the beneficiary or the administrator.

Housing
Provide the Court with a specific jurisdiction to determine ownership of a dwelling on Māori freehold land; widen the powers of the Court in relation to amalgamated land.

Leases
Allow trustees of Māori Reservations more decision-making powers regarding leases; extend the period for which a long-term lease can be granted without Court approval.

Proposed fisheries amendments
Consultation occurred earlier this year on a three-part package to enhance value to fishers and better ensure sustainability.

Part 1 contains proposals to improve the responsiveness, efficiency and certainty of decision-making under the Fisheries Act. Part 2 seeks greater protection for on-board camera footage and to ensure that the camera programme is workable. Part 3 will implement new rules for commercial fishes setting out when QMS fish must be landed and when they can return to sea.

Māori control 20% of the commercial quota for each species managed under the Quota Management System, securing settlements to address commercial interests and ongoing support for customary fishing practices.

Local Government Reform

The Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024 reinstates the right to a local referendum on the establishment or ongoing use of Māori wards and Māori constituencies.

This includes requiring a poll at the next local body elections on any Māori wards and Māori constituencies established without a poll.

Of 45 affected councils, 43 have opted to retain their Māori wards, thereby necessitating referenda in 2025, the outcomes of which will be binding and will continue beyond the 2025–2028 term.

The two exceptions are Kaipara District Council and Upper Hutt City Council, both of which elected to disestablish their Māori wards without consultation. Kaipara District Council faced a legal challenge but the High Court found that it had met all legislative requirements (*Te Rūnanga O Ngāti Whātua v Kaipara District Council* [2024] NZHC 3889).

The Amendment Act was criticised by a coalition of 54 mayors and regional council chairs as an overreach by central Government into local decision-making and was found by the Waitangi Tribunal to be in beach of the Treaty of Waitangi (WAI3365).

Regulatory Standards Bill

The Regulatory Standards Bill is an Act Party initiative which the Coalition Government has committed to support. Submissions close on Monday 23 June. Already a large number have been received, the overwhelming majority of them hostile to the Bill.

The Bill purports to improve Parliament's scrutiny of legislation and its oversight and control of the use of delegated legislative powers but concerns have been raised that it will elevate property rights and corporate profits above the public good, environmental values and Te Tiriti o Waitangi.

The Waitangi Tribunal released an urgent report on the Bill on 16 May, finding that if enacted without meaningful consultation with Māori, it would be a breach of the Treaty, including the principles of partnership and active protection.

Iwi and Crown relationships in the Treaty settlement context

Tērā te marae nui a Kiwa te kānapanapa nei i raro i a koe Waitā. Hīia mai rā ki runga te tini a Ikatere, rukuhia ki tai, kohia ki tātahi hei kai mā te tini o uta. Ka hiki mata te tapuwae a Tangaroa! Koia au nui, koia au roa, koia moana tuarangaranga koia moana i āio.

The recent decision of Boldt J in *Te Ohu Kai Moana Trustee Ltd v The Attorney-General* (TOKM)[1] provides important commentary on the nature of the iwi and Crown relationship in the context of the Treaty Settlement Process.

The background underpinning this case was the Treaty of Waitangi Fisheries Settlement 1992 (the Fisheries Settlement), which set the bar for modern settlements of Crown breaches of the Treaty of Waitangi.

The kaupapa of the Fisheries Settlement aligns with the whetū Waitā as it is associated with the moana and all that lives in it.

In TOKM, Te Ohu Kai Moana Trustee Ltd claimed the Crown is in ongoing breach of the Fisheries Settlement because under section 28N of the Fisheries Act it had transferred away from Māori without compensation fishing quota that had been reserved for Māori as part of the Fisheries Settlement.

The Crown denied any breach and claimed it had discharged its obligations long before.

In essence, Boldt J held that following settlement, the relationship between iwi and the Crown is enduring. Boldt J provided a series of comments on the iwi and Crown relationship while accepting Te Ohu Kaimoana Trustee Ltd's claim, including finding:[2]

As long as the Settlement Act, which gives legal recognition to the promise in the Deed of Settlement, remains in force, the Crown's obligations endure.

Boldt J described Treaty Settlements as "steps towards reconciliation, the restoration of mana and putting right of historic wrongs." Accordingly, technical defences should not be used against credible claims that the Crown has breached its obligations under the Treaty of Waitangi.

Over the past 150 years of law in Aotearoa, the courts' view has shifted significantly. In the infamous *Wi Parata v Bishop of Wellington* decision, Prendergast J described the Treaty as a "simple nullity".[5] Now, the High Court has stated that the relationship between iwi and the Crown, and the corresponding obligations derived from the Treaty, endure.[6]

1. Te Ohu Kai Moana Trustee Ltd v The Attorney-General [2025] NZHC 657.
2. Te Ohu Kai Moana Trustee Ltd v The Attorney-General [2025] NZHC 657 at [128].
3. Te Ohu Kai Moana Trustee Ltd v The Attorney-General [2025] NZHC 657 at [152].
4. Te Ohu Kai Moana Trustee Ltd v The Attorney-General [2025] NZHC 657 at [152].
5. Wi Parata v The Bishop of Wellington (1877) 3 NZ Jur (NS) SC 72 at 79.
6. This decision has been appealed. The comments from the Court of Appeal on the iwi and Crown relationship will be significant in further describing the relationship and the degree of obligations owed by iwi and the Crown to each other.

Customary coastal marine rights – the battle for recognition

E kore te pātiki e hoki ki tōna puehu

Since the 2003 Court of Appeal decision in *Attorney-General v Ngāti Apa* that Māori claims to areas of the foreshore and seabed had not been extinguished by the transfer of sovereignty but were "interests preserved by the common law", the New Zealand Parliament has been twisting and turning as if on a spit.

The then Labour Government responded with the Foreshore and Seabed Act 2004 which sought to "preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders" while also creating what the Act's reluctant architect Michael Cullen described in his introductory speech as "a fair and reasonable framework for working through individual cases in the context of a settled concept of Crown ownership on behalf of all New Zealanders".

But the Act was never acceptable to Māori and, under a confidence and supply agreement entered into with the Māori Party, the next National Government appointed an independent Ministerial Review Panel in 2009. The Panel found the Act was severely discriminatory against whānau, hapū and iwi and recommended that it be repealed and replaced.

The Marine and Coastal Area (Takutai Moana) Act was passed in 2011. It has a four-part purpose to:

- establish a durable scheme to ensure the protection of the legitimate interests of all New Zealanders in the marine and coastal area of New Zealand, and
- recognise the mana tuku iho exercised in the marine and coastal area by iwi, hapū, and whānau as tangata whenua, and
- provide for the exercise of customary interests in the common marine and coastal area, and
- acknowledge the Treaty of Waitangi (te Tiriti o Waitangi).

The first successful claim was Re Tipene in 2016 where the High Court granted customary marine title (CMT) to Rakiura Māori over two remote islands off Stewart Island that the applicants could demonstrate they had used continuously for muttonbirding since the Treaty was signed.

Despite the remoteness of the location and the fact that the claim was uncontested, the process was laborious and time-consuming. (The Waitangi Tribunal examined the procedural and resourcing regime underlying Takutai Moana Act and reported in June 2020 that it fell well short of Treaty compliance.)

A more recent case – *Re Edwards Whakatōhea* – has found itself on a long and winding road. It is as sprawling as Re Tipene was tight in that it involves a range of applicant groups in the Eastern Bay of Plenty and the outcome will have significant implications for some 200 other applications already filed in the High Court.

The *Re Edwards* journey to date

- **May 2021** – In a landmark judgment, the High Court awards CMT and protected customary rights under Takutai Moana. Churchman J explicitly recognises that the Act doesn't' allow for western property concepts such as proprietorial interests in the interpretation of "holds the specified area in accordance with tikanga" so instead relies on tikanga evidence to establish the "without substantial interruption" test.
- **October 2023** – The Court of Appeal, in a case taken by the Attorney-General, finds by majority that the approach taken by the High Court is incorrect and that exclusivity means that in 1840, before the proclamation of British sovereignty, the applicant group had sufficient control over the area and its resources to exclude others should it wish to do so. But the Court allows that the exercise of tikanga may have been disrupted by the exercise of the Crown's kāwanatanga (i.e., lawful activities conducted under statutory authority).

  Shortly after this decision is released, although coincidentally as the work had been underway much earlier, the Waitangi Tribunal issues a report finding that the Crown's claims of balancing Māori rights against other public and private rights under Takutai Moana has often been unreasonable, arbitrary and unjustifiably restrictive.
- **November 2023** – National agrees in its coalition agreement with New Zealand First to amend the Tukutai Moana Act to address the Court of Appeal's finding.
- **September 2024** – The Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill is introduced. Measures include:
  - inserting a declaratory statement that overturns the reasoning of the Court of Appeal and High Court in Re Edwards, and all High Court decisions since Re Edwards, where they relate to the test for CMT
  - adding text to section 58 to define and clarify the terms 'exclusive use and occupation and substantial interruption'
  - amending 'the burden of proof' (section 106) to clarify that applicant groups are required to prove exclusive use and occupation from 1840 to the present day, and
  - clarifying the relationship between the framing sections of the Act (the preamble, the purpose, and the Treaty of Waitangi reference) and section 58 in a way that allows section 58 to operate more in line with its literal wording.
- **September 2024** – the Waitangi Tribunal conducts an urgent inquiry into the preparation of the amending legislation and finds that the Government has ignored official advice, failed to consult with Māori, and breached several principles, including active protection and good governance.

  Notwithstanding this, the select committee returns the Bill to Parliament with a recommendation that it be passed (although that has yet to happen at this stage).
- **December 2024 -** Having allowed an appeal by the Attorney-General against the Court of Appeal's decision in Re Edwards, the Supreme Court takes the opportunity to provide a fresh test under s 58 that it thinks better reflects the original intention of Parliament.

  This is that an applicant group must prove that it holds the claimed area in accordance with tikanga and has used and occupied it from 1840 to the present. If those criteria are met, the burden shifts to contradictors to demonstrate that use and occupation is not exclusive or has been substantially interrupted.

What next?

The Government now has a choice.

It could decide that the Supreme Court has now settled the matter with a precedent-setting judgment that other courts will follow. Or it could box ahead with the Bill either because it thinks the Bill delivers elements that the Supreme Court decision doesn't or because it thinks there are political points in it.

Legal personhood

Ko au te whenua, ko te whenua ko au

Ngāi Tūhoe made history a little over a decade ago when Te Urewera was recognised as a legal person as part of their 2014 treaty settlement.

Then in 2017, legal personhood was granted for Te Awa Tupua (the Whanganui River) and earlier this year for Te Kāhui Tupua (several ancestral mountains including Taranaki Maunga) through the passage of the Te Ture Whakatupua mō Te Kāhui Tupua 2025/ Taranaki Maunga Collective Redress Act 2025.

The effect of such recognition is that these natural features are owned by no one, with decisions being made through iwi-Crown co-management arrangements.

While legal personhood is traditionally applied to companies and other entities, leveraging the concept in this way acknowledges the mana of Te Urewera, Te Awa Tupua and Taranaki Maunga, and empowers kaitiaki.

But indigenous leaders from Aotearoa New Zealand and across the Pacific are now attempting to create a new pathway through ‘He Whakaputanga Moana’ – a treaty they signed last year calling for similar recognition in respect of whales.

While not legally binding, He Whakaputanga Moana holds symbolic weight. Whales, like maunga, awa, and ngāhere, possess significant mana and are regarded as kaitiaki in their own right.

Little progress has been achieved so far as these are early days and it may be an uphill battle as taking legal personhood beyond the treaty context and extending it to whales and other flora/fauna would create a powerful new conservation tool.

Leaning on the law for climate justice

The fate of the claim by Mike Smith (Ngāpuhi, Ngāti Kahu) to force a stronger response to climate change from the Crown by invoking the New Zealand Bill of Rights Act 1990 (NZBORA), Te Tiriti o Waitangi, a fiduciary duty and a (novel) common law duty is now sitting with the Supreme Court.

Mr Smith applied to the Supreme Court in February for leave to appeal the Court of Appeal's decision in *Smith v Attorney-General* [2024] NZCA 692 that his case raises no reasonably arguable cause of action. He first brought the claim in the High Court on behalf of himself, his whānau, iwi, and future generations then went to the Court of Appeal when he failed in the High Court. In dismissing the appeal, the Court of Appeal found that:

- while declaratory relief against a deficient climate response might potentially be available under the right to life (s 8 of NZBORA) and the right to culture (s 20 of NZBORA), this would require the Court to find that the Climate Change Response Act 2022 (CCRA) was inadequate and it was not the Court's role to "second guess" policy choices made by Parliament
- the claim that the Crown's climate response breached Te Tiriti or a fiduciary duty to Māori was not tenable given the CCRA contains a "comprehensive Treaty clause", and
- the novel common law claim, which relied on the NZBORA and the Treaty, could also not succeed as that would mean extending a public trust doctrine beyond its limited traditional application, which would be problematic.

Even if the Supreme Court denies leave to hear the appeal, the CCRA framework will be subject to further challenge with a claim lodged by Lawyers for Climate Action NZ Inc and the Environmental Law Initiative this month alleging that the Government's emissions reduction plan fails to fulfil basic requirements of the CCRA. Mr Smith is also the plaintiff in a claim against seven New Zealand companies for their contribution to the adverse effects of climate change and damage or interference with the climate system. This survived a strike out application on appeal to the Supreme Court in *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5, [2024] 1 NZLR 134. Chapman Tripp represents a number of defendants in that case.

In the meantime, the Waitangi Tribunal, led by Māori Land Court Judge Stephanie Milroy, is conducting a Climate Change Priority Inquiry WAI3325 focussed on the physical, spiritual, and socioeconomic impacts of climate change on Māori, including the relevant Treaty principles to be considered in climate change policy and recommendations for how the Crown should meaningfully engage and consult with Māori. This was initially sparked by 22 existing claims to the Tribunal but has now been extended to 50 claims. The Tribunal is expected to sit for a total of eight hearing weeks to allow for expert evidence, claimant evidence, Crown evidence and closing submissions, with a report expected in 2026.

Pre-hearing directions stressed the need for the Tribunal to be presented with a full picture, informed by global examples (particularly from Moana Nui a Kiwa) addressing the full range of impacts from whakapapa to insurance for marae.

Celebrating 50 years of the Waitangi Tribunal

E tū Pōuhutukawa
Te kaikawe i ngā mate o te tau
Haere rā koutou ki te uma o Ranginui
Hei whetū i te kete nui a Tāne
Koia rā! Kua whetūrangitia koutou kei aku rau kahu rangi!

This October marks 50 years since the formation of the Waitangi Tribunal. He hirahira te wā! We look back on the circumstances of the Tribunal's creation and some of its more significant reports. And we signpost the Government-commissioned review, now getting underway, into the Treaty of Waitangi Act and the Waitangi Tribunal's jurisdiction.

In light of Matariki, we also acknowledge those involved in the establishment and running of the Tribunal who have now passed. Moe mai, moe mai, ngaro atu rā rātou i te pō.

The Treaty of Waitangi Act, introduced by Labour MP Matiu Rata, was passed in 1975 and initially was limited to contemporary claims of Crown breaches of the principles of the Treaty post-1975. It was not until a decade later, through the Treaty of Waitangi Amendment Act 1985, that the Tribunal was allowed to inquire into claims pre-1975.

The Tribunal has published a number of momentous reports.

- In Te Paparahi o Te Raki (Stage 1), it found that Te Raki Māori did not cede sovereignty to the Crown when signing the Treaty of Waitangi and Te Tiriti o Waitangi.[1]
- In relation to the Manukau Claim, it found that the Treaty promised Māori the retention of their mana or traditional authority and status.[2]
- And across a number of broad kaupapa inquiries on mana wāhine, mātauranga Māori and taonga, and te reo Māori, the Tribunal's findings and recommendations have informed court decisions. They have also influenced Māori and Crown relations over the past 50 years.

The Tribunal has had a meaningful impact on the law, policy, public knowledge, and kōrero about Māori and Crown relations in Aotearoa. This was acknowledged on the occasion of its 40th anniversary by Hirini Moko Mead:[3]

> "There is no doubt that the work and achievements of the Waitangi Tribunal deserve the gratitude of the nation".

Dr Caren Fox, now Chief Judge of the Māori Land Court, was similarly moved, saying:

> "We have some of the best brains in the Treaty field working as members on the Waitangi Tribunal. We should use that resource, and talk about how we move into the future. And then we should be bold enough to initiate discussions externally as well.[4]

The review

This was committed to as part of the National Party's coalition agreement with New Zealand First and was appointed in May this year by Tama Potaka in his capacity as Minister of Māori Development.

The review is led by Bruce Gray KC, supported by an Independent Technical Advisory Group comprising Kararaina Calcott-Cribb, David Cochrane, and Dion Tuuta.

We hope for an outcome that will allow the Tribunal to continue to serve Aotearoa's long-term interests.

Me mihi ka tika ki a koutou kei te mura o te ahi, ki a koutou ngā ika a Whiro. Kua tawhiti kē tō haerenga mai, kia kore e haere tonu. He nui rawa ō mahi kia kore e mahi tonu.

1. Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga – The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry* (Part I, Vol 2, Wai 1040, 2023) at 557, 579 and 878.
2. Waitangi Tribunal *Report of the Waitangi Tribunal on The Manukau Claim* (Wai 8, 1985) at 66.
3. Te Rōpū Whakamana i te Tiriti o Waitangi | Waitangi Tribunal Te Manutukutuku (Vol 69, January 2016) at 19.
4. Te Rōpū Whakamana i te Tiriti o Waitangi | Waitangi Tribunal Te Manutukutuku (Vol 69, January 2016) at 17.

The Treaty Principles Bill

The Principles of the Treaty of Waitangi Bill (Bill) attracted 295,670 unique submissions -90% opposed, 8% in support, and 2% unclear. It was introduced by the Coalition Government on 10 April 2025 and rejected at its second reading on 7 November with a vote of 112 against and 11 in favour, ending its progress through the legislative process.

The Bill sparked widespread protest, including a hikoi from Cape Reinga that drew comparisons to the historic 1975 Māori Land March and the 2004 Foreshore and Seabed demonstration.

The Bill's stated purpose was to:

- set out the principles of the Treaty of Waitangi (te Tiriti) in legislation, and
- require, where relevant, that those principles be used when interpreting legislation.

The Bill proposed three principles.

- **Civil government:** the Government of New Zealand has full power to govern, and Parliament has full power to make laws in the best interests of everyone, and in accordance with the rule of law and the maintenance of a free and democratic society.
- **Rights of hapū and iwi Māori:** the Crown recognises the rights that hapū and iwi had when they signed te Tiriti. If those rights differ from the rights of everyone else, the Crown will only respect and protect those rights to the extent that those rights are specified in an agreed Treaty settlement.
- **Right to equality:** everyone is equal before the law and is entitled to the equal protection and equal benefit of the law and equal enjoyment of the same fundamental human rights.

Common themes identified from submissions

In support

- Legal clarity and certainty
- Equality before the law
- Public engagement through referendum
- Social cohesion.

Against

- Inconsistencies with te Tiriti
- Criticisms of the Bill development process
- Equity
- Legal and constitutional implications

Opposition from legal practitioners

The Bill faced opposition and criticism from legal practitioners across the country, including Chapman Tripp. Among this was a group of 42 King's Counsel who wrote an open letter to Prime Minister Christopher Luxon and Attorney General Judith Collins proposing that the Bill be abandoned.

Chapman Tripp's main arguments in opposition to the Bill included:

- **departure from settled law:** the Bill introduces principles that are not credibly derived from the text, context, and history of te Tiriti and that materially depart from established Treaty principles developed by the senior appellate courts and the Waitangi Tribunal, and
- **uncertainty:** the Bill would generate material uncertainty in the law and, for some of the proposed principles, would require material judicial development.

The 42 King's Counsel also made these points, saying the Treaty principles represented settled law and that the Bill's attempt to replace them amounted to an attempt to rewrite te Tiriti itself and that the Bill would cause significant legal confusion and uncertainty, inevitably resulting in protracted litigation and cost.

They also raised additional concerns, arguing that the Bill:

- **undermined Māori rights:** Principle 2 of the Bill (recognising Māori rights only when specified in historical Treaty settlements) erodes tino rangatiratanga (self-determination) and ignores the living nature of the Treaty relationship, and
- **created constitutional risk and process issues**: the development of the Bill lacked consultation with Māori and legal experts and the introduction of the Bill and the intended referendum on implementation of the Bill would be inappropriate as a way of addressing such an important and complex constitutional issue.

Read Chapman Tripp's submission
on the Treaty Principles Bill

Key milestones in the development of the Treaty Principles

1840

SIGNING OF TE TIRITI O WAITANGI

The Crown and many Māori rangatira sign the Treaty/Te Tiriti. The English and te reo Māori texts differ, creating foundational interpretive challenges that continue to this day.

1975

WAITANGI TRIBUNAL ESTABLISHED

- Treaty of Waitangi Act 1975 creates the Waitangi Tribunal to hear claims relating to Treaty breaches from 1975 onwards.
- Concept of "principles of the Treaty" introduced in legislation, without defining them.

1985

TRIBUNAL JURISDICTION EXTENDED

- Amendment to the Treaty of Waitangi Act allows claims for breaches back to 1840.
- Marks the beginning of significant historic claims processes.

1987

"LANDS CASE" (*NZ MĀORI COUNCIL V ATTORNEY-GENERAL*)

- Court of Appeal defines key Treaty principles for the first time, including:
  - Partnership
  - Active protection, and
  - Duty to redress.
- Establishes that the Crown must act consistently with these principles where referenced in statute.

1990s–2000s

PRINCIPLES INCORPORATED ACROSS LEGISLATION

- Treaty principles appear in 40+ statutes, including the State-Owned Enterprises Act and Resource Management Act.
- Waitangi Tribunal and courts continue to refine principles.

2019

GOVERNMENT LAUNCHES TE HURIHANGANUI & HE PUAPUA

- Policy frameworks exploring co-governance and implementing UNDRIP (the UN Declaration on the Rights of Indigenous Peoples, endorsed by NZ in 2010).
- Backlash and renewed debate about the scope of the Treaty principles.

2024-2025

TREATY PRINCIPLES BILL

- Seeks to legislate new, more limited principles (sovereignty of Parliament, equal rights, and restricted Māori rights to settled claims).
- Critics say it rewrites the Treaty; supporters argue it provides needed clarity.
- Triggers one of the largest hikoi and most significant consultation processes in decades (295,000+ submissions, 90% opposed).
- Bill is defeated at its second reading with a vote of 112 against and 11 in favour, ending its progress through the legislative process.

Economic trends and insights

Key points from BERL Report

The Māori economy continues to go from strength to strength making Māori collectives (Māori incorporations, trusts, and post-settlement governance entities) and Māori-owned businesses increasingly central to New Zealand's economic future.

It is likely the Māori economy will meet (if not exceed) $200b by 2030.

According to Business and Economic Research Limited (BERL), in the five years from 2018 to 2023, a period which included the COVID-19 pandemic, growth was recorded of:

- 83% in terms of Māori asset value which increased from $69b to $126b, surpassing projections that it might reach $100b by 2030. The 10 largest iwi by asset base collectively hold over $8.2b, and
- over 86% in terms of contribution to GDP, rising from $17b in 2018 to $32b in 2023 and now accounting for 9% of New Zealand's total GDP.

Based on this performance, it is likely the Māori economy will meet (if not exceed) $200b by 2030. The asset base would need to increase by roughly 59% to reach this figure (a lower percentage increase than recorded in either of the last two survey periods).

Among the factors contributing to this rapid rise are:

- **Diversification into high-growth sectors**
  In particular: professional, scientific, and technical services ($5.1b, up from $1.2b in 2018); administrative, support, and other services ($4.2b), and real estate and property services ($4.1b). The professional, scientific, and technical services sector includes high-value services such as architecture, engineering, scientific research and development, IT services, and management consulting, primarily provided by Māori-owned businesses, highlighting the value of Māori entrepreneurship
- **Diversification of assets**
  Agriculture, forestry, and fishing remain significant but there has been strong growth in real estate and property services (from $16.7b in 2018 to $26.3b in 2023. The professional, scientific, and technical services industry is also a strong component of the asset base, with assets valued at $14.6b in 2023
- **Māori-owned businesses**
  – up from 19,200 in 2018 to almost 24,000 in 2023
- **Workforce growth and increasing sophistication**
  Between 2018 and 2023, the Māori working-age population in New Zealand increased to 625,000, representing 14% of the total. In 2023, more Māori were employed in high-skilled occupations (46%) than in low-skilled ones (43%) for the first time since 2006 when measurements began.

Among the future trends we expect are:

- Greater participation by Māori collectives as they continue to grow in size.
- Long term, value-based investment. The intergenerational focus of Māori collectives and Māori-owned businesses and the prioritisation of sustainable growth over short-term financial returns position them well to lead in ethical investment and impact-led economic development, particularly in infrastructure projects like solar energy, water infrastructure, and roads.
- Strong workforce growth. With 55% of Māori under age 30, the Māori population is demographically poised to sustain long-term growth, address workforce shortages, and power sectors like healthcare, infrastructure, technology, and education.
- Increased exports: With Māori exports at $5.2b and growing, the Māori economy is establishing itself as a distinctive export brand, based on authenticity, sustainability, and indigenous knowledge.
- Legal and policy change. Expected amendments to the Te Ture Whenua Māori Act 1993 should enhance the use of Māori land and unlock its economic potential. Policies promoting infrastructure investment and expanding export opportunities are likely to drive business growth and innovation within Māori communities.

With a young and growing population that is increasingly well educated, and proposals to remove longstanding barriers to further expansion, the Māori economy holds great future potential.

Te Waka Ture

As we celebrate Chapman Tripp's 150th anniversary, we also reflect on the journey Te Waka Ture has taken since our establishment 15 years ago to focus our passion for growing the Māori economy and developing the constitutional framework of Aotearoa New Zealand.

We believe we have played a part in the Māori economy's success and have helped iwi and hapū leaders to achieve their cultural, social, environmental and economic goals and to hold the Crown to account where required.

In recognition of the continued support from our clients and communities, we endeavour to give back. Te Waka Ture regularly undertakes pro bono work in order to assist iwi groups, Māori land trusts, and other Māori organisations with promoting and achieving their objectives. We have also taught Iwi Corporate Governance at the University of Auckland to share our knowledge and contribute to those who come after us.

We look forward to finding new ways to provide further support in the future.

We thank our clients and the staff and partners at Chapman Tripp for their support of Te Waka Ture as we have become part of the firm's 150-year legacy. We look forward to continuing to work alongside iwi, hapū, and their leaders, contributing to the ongoing growth and development of Aotearoa New Zealand.

Te Waka Ture - Māori Business Team

Te Aopare Dewes

Hoa Rangapū (Partner)
Ngāti Porou | Ngāti Rangitihi
Corporate & commercial

T: +64 9 358 9839 M: +64 27 209 0810
E: teaopare.dewes@chapmantripp.com

Justin Graham

Hoa Rangapū (Partner)
Litigation & dispute resolution

T: +64 9 357 8997 M: +64 27 209 0807
E: justin.graham@chapmantripp.com

Graeme Olding

Hoa Rangapū (Partner)
Tax

T: +64 9 357 9259 M: +64 27 591 6103
E: graeme.olding@chapmantripp.com

Findlay Jacob-Sauer

Rōia Whakarae (Senior Associate)
Ngāi Te Rangi
Corporate & commercial

T: +64 9 357 2725 M: +64 21 110 3889
E: findlay.jacob-sauer@chapmantripp.com

Autumn McNeill

Rōia Whakarae (Senior Associate)
Tapuika
Corporate & commercial

T: +64 3 353 0930 M: +64 27 2888 661
E: autumn.mcneill@chapmantripp.com

Rachel Robilliard

Rōia Whakarae (Senior Associate)
Ngāi Tahu | Ngāi Te Ruahikihiki
Environment & planning

T: +64 3 353 1234 M: +64 27 320 3446
E: rachel.robilliard@chapmantripp.com

Morgan Dalton-Mill

Rōia Matua (Senior Solicitor)
Ngāti Whātua ki Kaipara | Ngāpuhi
Litigation

T: +64 9 357 9455
E: morgan.dalton-mill@chapmantripp.com

Trent Harris

Rōia Matua (Senior Solicitor)
Rangitāne o Tamaki Nui-ā-Rua Ngāpuhi
Corporate & commercial

T: +64 9 357 9174
E: trent.harris@chapmantripp.com

Tallulah Parker

Rōia Matua (Senior Solicitor)
Te Rūnagnga o Te Rarawa | Ngāpuhi
Environment & planning

T: +64 3 353 0025 M: +64 21 703 767
E: tallulah.parker@chapmantripp.com

chapman tripp

Auckland
15 Customs Street West
PO Box 2206
Auckland 1140
T: +64 9 357 9000

Wellington
20 Customhouse Quay
PO Box 993
Wellington 6140
T: +64 4 499 5999

Christchurch
60 Cashel Street
PO Box 2510
Christchurch 8140
T: +64 3 353 4130

nz.linkedin.com/company/chapman-tripp

chapmantripp.com

Chapman Tripp is a dynamic and innovative commercial law firm at the leading edge of legal practice. With offices in Auckland, Wellington and Christchurch, the firm supports clients to succeed across industry, commerce and government. Chapman Tripp is known as the 'go to' for complex, business-critical strategic mandates across the full spectrum of corporate and commercial law. Chapman Tripp's expertise covers mergers and acquisitions, capital markets, banking and finance, restructuring and insolvency, Māori business, litigation and dispute resolution, employment, health and safety, government and public law, privacy and data protection, intellectual property, media and telecommunications, real estate and construction, energy, environmental and natural resources, and tax.