

## Taxation of Māori authorities

To many it came as no surprise that the Government announced it will not be adopting any of the Tax Working Group's (TWG) recommendations on capital gains taxation and that it will not be conducting any further work on that aspect of the TWG's final report. While the issue of whether New Zealand should adopt a comprehensive capital gains tax dominated headlines in the media, the TWG's terms of reference and the recommendations made regarding improvements to the structure, fairness and balance of the tax system were much more wide ranging, and for Māori some positive developments have arisen as a result.

Under the current tax rules Māori authorities often use transparent structures, such as limited partnerships, in order to obtain the 17.5% tax rate for subsidiary businesses. However, tax driven structuring in many cases results in what would otherwise be unnecessary complexity. The TWG has recommended extending the 17.5% tax rate of Māori authorities to their wholly-owned subsidiaries, which should provide a greater level of flexibility, reduce tax inefficiencies and in some cases present an opportunity to simplify iwi structures.

The TWG has also suggested a number of technical refinements to the Māori authority rules to be added to the Tax Policy Work Programme. A key recommendation is to change the current default resident withholding tax rate on distributions from Māori authorities from 33% to 17.5%, which applies when a member has not provided their IRD number. The 17.5% Māori authority tax rate is intended to reflect the most common marginal rate of its members and is generally aimed at reducing compliance costs. But in many cases members do not have an IRD number (for example minors or members living overseas) and do not file a tax return, which means these members are currently subject to additional taxation of 15.5% on distributions received.

## Te Ao Māori perspectives within a tax policy framework

The TWG has made some solid recommendations in regards to the development of a tax policy framework as a road map for future law changes. In particular, the movement away from a purely economic approach to tax policy and towards a more holistic approach that incorporates principles from Te Ao Māori and the Living Standards Framework.

The TWG worked with Māori academics and experts to start putting together the building blocks of this more holistic framework called He Ara Waiora, which draws on four tikanga principles: manaakitanga (care and respect); kaitiakitanga (stewardship/guardianship); whanaungatanga (the relationships/connections between us); and ōhanga/whairama (prosperity).

However, the group has acknowledged that more needs to be done in regards to He Ara Waiora and the development of Te Ao Māori perspectives into a concrete policy framework that can be applied by lawmakers under which they can be held to account. A discussion paper on the future development of He Ara Waiora will be released to keep the public informed and engaged with how this important development is progressing.

## Justice Joe Williams appointed to Te Kōti Mana Nui

*Ehara taku toa i te toa takitahi, engari ko te toa takitini.*

History has been made with the recent appointment of Justice Joseph Victor Williams as the first Māori Judge to the Supreme Court of New Zealand. Justice Williams is a fluent speaker of te reo Māori and deeply versed in the understanding and application of tikanga Māori. He has already made a significant contribution to the development of New Zealand jurisprudence and expect this to continue, particularly with the growing recognition of the place of tikanga Māori in the common law.

Heoi anō rā, e te kaiwhakawā, nohoia mai tō taumata hōu, tō taumata kaiwhakawā o te Kōti Mana Nui o Aotearoa. Kua whakatārewahia koe ki te taumata tiketike o te ture, ka tika.

Anei a Chapman Tripp e mihi ana ki tō ekenga nui.

## Wai 2840 – Hauraki overlapping claims inquiry

In early April, a week long hearing was held at Waiwhetu Marae for *Wai 2840 – Hauraki Overlapping Claims Inquiry* – the Waitangi Tribunal’s urgent inquiry into the Crown’s Treaty settlement policy regarding overlapping claims and the proposed redress in relation to the Hauraki Collective, Marūtūahu Collective and individual Hauraki iwi settlements (the *Hauraki Inquiry*).



Waiwhetu Marae

The claimants in the Hauraki Inquiry are Ngāi Te Rangi, Ngāti Ranginui, Ngāti Wai, Ngāti Manuhiri, and Ngāti Porou ki Hauraki. The claimants raised concerns about redress (both exclusive/non-exclusive and commercial/cultural) which had been offered to the Pare Hauraki collective and its constituent iwi and the lack of a tikanga-based process for dealing with overlapping claims between iwi groups.

We expect the Tribunal’s report will be released later this year and while the recommendations will be non-binding, the report will be influential in terms of how the Crown deals with the current overlapping claim issues, and how it applies its overlapping claims policy in the future.

## He pitopito kōrero



**Briar Peat** (Ngāti Rangiwewehi, Ngāti Whakaeu) has recently left Chapman Tripp to do an OE in the United Kingdom. We congratulate Briar on her recent promotion to Rōia Matua (Senior Solicitor) and for her invaluable contribution to Te Waka Ture over the past five years. Kei te tuku ngā mihi ki a koe, Briar, mō ō mahi rangatira i ngā tau kua pahure.



**Rachel Robilliard** (Ngāi Tahu, Ngāi Te Ruahikihiki) joined our resource management team in Christchurch earlier this year. Rachel graduated from the University of Canterbury in 2016 with an LLB/BSc and practised resource management at another large law firm before joining Chapman Tripp. Rachel currently holds the kaitiaki portfolio for Te Taumutu Rūnanga.



**Josie Te Rata** (Ngāti Raukawa ki te Tonga, Ngāti Wehi Wehi) has recently joined our litigation team in Wellington. Josie graduated from the University of Otago in 2016 with an LLB(Hons)/BSc. Josie worked as a judge’s clerk to Justice O’Regan for two years before joining Chapman Tripp in February. She is also currently the editor in chief of the New Zealand Women’s Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine.



### Te Waka Ture at Briar's poroporoaki

Pictured from left to right:

Cameron Jacob-Sauer, Nicola De Wit, Kate Roberts-Gray, Te Aopare Dewes, Briar Peat, Hanamaraea Walker, Conor Tinker, Findlay Jacob-Sauer, Graeme Olding.

Absent: Nick Wells, Justin Graham, Liam Stoneley, Roimata Mitchell, Rachel Robilliard, Josie Te Rata, Toni Love and Matthew Denton.

## Whakapā mai



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Every effort has been made to ensure accuracy in this newsletter. However, the items are necessarily generalised and readers are urged to seek specific advice on particular matters and not rely solely on this text.

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