

# TOHU ĀRAHI I NGĀ TAKE WHAKAPIRI

## Procedural guidance on the management of overlapping issues across the kaupapa inquiry programme

*A Practice Note Issued under Clause 5(9)  
and (10) of Schedule 2 to the Treaty of  
Waitangi Act 1975*



September 2025

## Introduction

1. In my memorandum of 4 October 2024, I updated parties on alternative processes the Tribunal may follow in commencing and progressing kaupapa inquiries.<sup>1</sup>
2. With all kaupapa inquiries now underway, overlaps between kaupapa inquiries have emerged as a recurring theme in several inquiries to date. Addressing potential overlaps between inquiries will become increasingly important as the Tribunal progresses, and in some cases attempts to accelerate, the pace of kaupapa inquiries over the next decade.
3. This practice note is therefore issued pursuant to clause 5(9) and (10) of Schedule 2 of the Treaty of Waitangi Act 1975, and sets out some overarching procedural guidance for addressing overlaps. The practice note also outlines:
  - (a) relevant factors the Tribunal may consider when deciding whether joint commissioning of evidence, joint hearings, or other joint approach is appropriate; and
  - (b) procedural matters for the Tribunal to consider when conducting joint hearings.

## Background

4. In 2015, Tribunal staff undertook a comprehensive analysis of all existing claims and claims issues not within scope of the Tribunal's district inquiry programme. Drawn from the claims, a series of common recurring themes of national significance for Māori were identified. These themes formed the basis of the kaupapa inquiry programme comprising 13 thematic inquiries.<sup>2</sup> Since 2015, a significant number of further claims have also been filed concerning these kaupapa issues.
5. In 2024, I commissioned a review of the Tribunal's work programme resulting in the release of the *Strategic Direction 2025-2035*. A copy of the Tribunal's *Strategic Direction* is attached as **Annex 1**.

### *Overlaps between kaupapa inquiries*

6. The current kaupapa inquiry programme is unique in that there are multiple Tribunal inquiries running concurrently into broad issues that intersect and overlap. For example, claims issues in the Mana Wahine Kaupapa Inquiry (Wai 2700) concern the intersection of gender and ethnicity on the one hand, and housing, education, justice, and economic issues on the other, all of which are the focus of other discrete kaupapa inquiries. Claims in the Housing Policy and Services (Wai 2750) and Health Services and Outcomes (Wai 2575) kaupapa inquiries also illustrate the nature of these overlaps (discussed below).

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<sup>1</sup> Memorandum-direction of the Chairperson, 4 October 2024.

<sup>2</sup> As set out in [Appendix B. The Kaupapa Inquiry Programme](#), January 2024.

7. The overlap between kaupapa inquiries stems, in part, from the overall nature of contemporary Māori Treaty grievances, which are often about the social inequities Māori experience because of alleged historical and contemporary Crown Treaty breaches. The kaupapa inquiry programme includes a range of kaupapa or thematic issues (such as housing, health, justice, social development, mana wahine, and education) that are interrelated due to the way socio-economic and socio-cultural factors intersect and influence outcomes in different spheres.

### **Addressing overlaps between kaupapa inquiries**

8. The Tribunal applies the principle that it does not hear a claim twice on the same issue, or permit a claimant dissatisfied with a finding to seek a different result in another inquiry. The technical term for this principle is '*functus officio*'. It is an important principle of law that speaks to when the Tribunal's jurisdiction over a claim comes to an end. When the Tribunal concludes its inquiry into a claim (or claims) and reports to Ministers it has discharged its function to inquire. Unless there are aspects of the claim expressly reserved for further inquiry the Tribunal's jurisdiction over the claim (or claims) is at an end and there is no power to further inquire.
9. Therefore, in considering the Tribunal's kaupapa inquiry programme as a whole, the overarching principle is that each kaupapa inquiry should maintain a focus on the claim issues for its own inquiry, but clarify with other inquiries how overlapping claims issues will be dealt with. To reduce duplication of work across inquiries, each inquiry should, as soon as practicable, clearly define which claim allegations will (and will not) be accepted as eligible to participate in each inquiry.
10. Overlapping claims issues can be managed by either referring the various overlapping claims issues to particular inquiries (either before eligibility decisions have been made or where eligible parties are amenable to this), or by adopting a joint approach to the overlapping claims issues.

#### *Referring overlapping claims issues to particular inquiries*

11. The Tribunal adopted this approach in 2018, when considering claims issues relating to the Waitapu block. The Waitapu block is partly located in both the Taihape: Rangitīkei ki Rangipō (Wai 2180) and Porirua ki Manawatū (Wai 2200) inquiry districts, and as a result, the overlapping claims issues relating to the block were divided up between the inquiries.

#### *Adopting a joint approach to overlapping claims issues*

12. The Tribunal will assess overlaps and the need for any joint commissioning of evidence, joint hearings or other joint approaches as a standard procedural step during one or more of the following phases of an inquiry, namely:
  - (a) during the **start-up phase** as part of the process of determining research needs (i.e. via the pre-casebook discussion/scoping paper);

- (b) towards the **end of the research phase** of an inquiry once the timing of hearings is in clearer view; and/or
- (c) during the **interlocutory phase** prior to the commencement of evidential hearings, with an eye to the relative progress of overlapping inquiries.

#### *Factors to consider*

13. While every inquiry will tend to be different, and the circumstances will dictate how best to set it up, the Tribunal will consider the following non-exhaustive list of factors when determining whether joint commissioning of evidence, a joint hearing, or other joint inquiry approach is appropriate, including:

- (a) the scope of overlap;
- (b) possible efficiencies and overall mutual benefit; and
- (c) timing and party readiness to proceed.

#### Scope of overlap

14. Scope refers to the nature and significance of overlap between claims issues for each inquiry. For example, claims regarding the overrepresentation of wāhine Māori in prisons is a key claim issue in both the Justice System and Mana Wahine kaupapa inquiries.

15. The Tribunal's experience to date has shown that only a very narrow and specific overlap in the scope of claims or claims issues has warranted joint hearings of two Tribunal panels. Namely:

- (a) In 2006 the Whanganui (Wai 903) and National Park (Wai 1130) district inquiries held a one-day joint sitting to hear oral and traditional evidence from several Ngāti Rangi kaumātua (evidence considered of equal weighting and importance to each inquiry);
- (b) In 2017 the Porirua ki Manawatū (Wai 2200) and Taihape: Rangitīkei ki Rangipō (Wai 2180) panels sat jointly for two days to hear technical evidence on the Rangitīkei River (a tupuna awa that flows through both inquiry districts);
- (c) In 2019 the Wairarapa (Wai 863) and Mangatū Forest (Wai 814) remedies panels sat jointly for three days to hear economic evidence that had been jointly commissioned by the Tribunal for the two inquiries; and
- (d) In 2024 the Economic Development Kaupapa Inquiry (Wai 3550) and the National Freshwater and Geothermal Resources Kaupapa Inquiry (Wai 2358) sat jointly for one day in order for the Economic Inquiry panel to 'understand the extent of coverage of economic development issues in the

Freshwater evidence and how this might inform the scoping of issues to be considered in the Economic inquiry'.<sup>3</sup>

16. For kaupapa inquiries considering whether the scope of the overlapping claims issues warrants a joint approach, the Tribunal will consider questions such as:

- (a) How many claimants are actively pursuing the same claims issues across multiple inquiries?
- (b) How many distinct overlapping issues are claimants pursuing across multiple inquiries? Are these claims issues narrow or broad in scope?
- (c) What is the overall significance and weight of the overlapping issues to the inquiry/inquiries?
- (d) What is the nature and scope of the technical evidence to hear? What is the nature and scope of claimant evidence to hear? Is there any jointly-commissioned evidence to hear?

Possible efficiencies and overall mutual benefit

17. Due to the limited time and other resources available to the Tribunal and parties, and the large number of kaupapa inquiries now running in parallel, a cost-benefit analysis will be useful to determine whether any joint commissioning, hearing or inquiry approach brings overall benefit to both inquiries. Questions the Tribunal will consider include:

- (a) What is the overall benefit of any joint inquiry initiatives? Will any joint initiatives bring mutual benefit (i.e. benefit both inquiries and/or inquiry parties)?
- (b) What is the overall cost of any joint inquiry initiatives? Are these initiatives/innovations going to create time and resource efficiencies, or will they use more resources (time and money) overall?
- (c) Will a joint hearing prevent or reduce duplicating the presentation of claimant, Crown and other technical evidence?
- (d) What impact (such as any consequent delays) will joint hearings or other initiatives have on existing Tribunal commitments in the short-to-medium term?
- (e) What is the impact of any joint initiative on the overall timeframes for each inquiry?

Timing and party readiness to proceed

18. Timing relates to practicalities about where each inquiry is at in the inquiry life span process (e.g. start-up, oral/experiential hearings, research, interlocutory, evidential

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<sup>3</sup> Wai 2358, #2.122.

hearing, or report writing phase). For example, one inquiry may be in the very early start-up phase of an inquiry. The other may have completed the research phase and be ready for hearing. Questions the Tribunal will consider include:

- (a) At what stage of the process is each overlapping inquiry?
- (b) Are these stages compatible/practical for holding joint hearings or other joint initiatives etc?
- (c) Are parties and counsel ready and able to proceed in this manner?

19. In 2023, the Tribunal considered the question of timing for a proposed joint hearing for the Health and Housing kaupapa inquiries. According to claimant co-ordinating counsel, 25 per cent of the claims participating in the Housing inquiry relate to hauora/health.<sup>4</sup> Hauora is also one of the four pakitara framing the Housing inquiry.<sup>5</sup> Co-ordinating counsel submitted that a joint sitting would prevent duplication in the presentation of evidence and hearing time, draw on the combined knowledge and expertise of the Tribunal panels on the issues, and allow the Tribunal to investigate the connection and any causative impacts between Māori health and housing.<sup>6</sup>
20. However, due to each inquiry being at significantly different stages of the inquiry process, the Presiding Officers declined the proposal for a joint sitting on the basis that doing so would likely cause undue disruption to each inquiry's programme.<sup>7</sup>

### **Procedural issues to consider for joint hearings**

21. Any joint hearings or other joint inquiry approaches will pose various procedural, evidential and reporting challenges.

#### *A joint hearing protocol*

22. To ensure fairness and natural justice and the efficiency of the hearing and report writing phases, parties to each inquiry will need clarity about the way in which each panel maintains the integrity of their inquiry, and any resulting findings and recommendations, so that all parties understand and agree on the basis upon which each panel can rely upon evidence that may be given in a joint hearing situation.
23. These matters will be addressed by inquiry panels issuing a joint hearing protocol that provides clear guidance on matters including:
- (a) if needed, the nomination and role of co-ordinating counsel;
  - (b) te Reo Māori and simultaneous translation;

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<sup>4</sup> Wai 2575, #3.2.727(b), at [9].

<sup>5</sup> Wai 2750, #2.6.41, at [53](d).

<sup>6</sup> Wai 2575, #3.2.727.

<sup>7</sup> Wai 2750, #2.6.61 and Wai 2575, #2.6.188.

- (c) pre-hearing filing dates (including dates for the filing of witness summaries, a joint draft hearing timetable, opening submissions, witness responses to questions of cross-examination, bundles of cross-examination documents to be used at hearing, and a final joint hearing timetable);
- (d) post-hearing filing dates (including dates for questions in writing from counsel and the Tribunal, the filing of post-hearing documentation, witness responses to questions in writing, and corrections to the joint draft hearing transcript);
- (e) detailed indications of how documents – depending on their type and nature – would be handled and placed on either individual, or both, records of inquiry;
- (f) procedures for cross-examination and the testing of evidence at hearing, including for the filing of cross-examination requests (if necessary) and confirmation of the order of witnesses for questioning;
- (g) arrangements for the presentation of opening submissions and briefs of evidence (such as those being taken as read);
- (h) recording specific directions or oral submissions made during the joint proceedings (so that any directions or oral submissions can be appropriately reflected within the respective records of inquiry);
- (i) the process for recording transcript corrections; and
- (j) any specific accessibility arrangements considered necessary to support effective hearing and inquiry participation.

24. As an example, the joint hearing protocol issued by the presiding officers of the Porirua ki Manawatū and Taihape inquiries is attached as **Annex 2**.

### *Reporting on joint hearings*

25. A joint hearing of two or more inquiry panels gives rise to options for how the Tribunal may report its findings and recommendations on the claims. The Tribunal may for instance:

- (a) conduct joint hearings with separate reporting; or
- (b) conduct joint hearings with a shared chapter of findings and recommendations.

26. A table prepared for the joint Porirua ki Manawatū and Taihape joint hearing<sup>8</sup> setting out potential advantages and disadvantages for each of the above reporting options is attached as **Annex 3**.

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<sup>8</sup> Wai 2180, #2.5.43.

## Conclusion

27. To recap:

- (a) Overlaps are an inherent and ongoing feature of the Tribunal's Kaupapa Inquiry Programme because of the nature of kaupapa claim issues and contemporary Māori treaty grievances.
- (b) Presiding Officers of kaupapa inquiries should undertake an assessment of overlaps during the start-up, towards the end of the research and/or prior to the interlocutory phases of their inquiries.
- (c) Where there is significant overlap between claims and/or claims issues between kaupapa inquiries, each inquiry must clearly define what claim allegations will be accepted as eligible to participate, to prevent duplication of work across inquiries. The overarching principle remains that each kaupapa inquiry should maintain a focus on the claim issues for its own inquiry but clarify with other inquiries how overlapping issues will be dealt with.
- (d) The Tribunal's experience to date has shown that only in very specific circumstances have overlaps between Tribunal inquiries warranted joint hearings.
- (e) Where the Tribunal agrees to hold joint hearings, a detailed joint hearing protocol covering the matters outlined above will likely be required, along with a clear assessment and articulation of how each inquiry will approach reporting.

**DATED** at Wellington this 19<sup>th</sup> day of September 2025



Chief Judge Dr C L Fox

Chairperson

**WAITANGI TRIBUNAL**