

Q and A: The Ngāpuhi Mandate Inquiry Report

What is a mandate process and why are such processes important?

Before the Crown can enter into negotiations with Māori groups for the settlement of their historical claims, it must first ensure that it is dealing with the right people. Mandate processes are run by those seeking to represent groups in settlement negotiations with the Crown. They are the means by which a group's representatives gain the support of their people, and evidence of that support, to enter negotiations with the Crown. The Crown's recognition of a group's mandate is, therefore, a crucial step towards entering settlement negotiations with the Crown.

What was this inquiry about?

On 14 February 2014 the Crown recognised that the Tūhoronuku Independent Mandated Authority (the Tūhoronuku IMA) had secured a mandate from the people of Ngāpuhi to enter negotiations to settle the historical Treaty grievances of all Ngāpuhi. A number of claimants, on behalf of Ngāpuhi hapū and hapū collectives, objected to the Tūhoronuku IMA having the authority to represent them. They alleged that the Crown had breached the principles of the Treaty of Waitangi by predetermining its decision to recognise that the Tūhoronuku IMA had secured a mandate. Further, they argued that Crown had recognised the Tūhoronuku IMA despite its not enjoying the support of a number of hapū and its structure and processes undermining the rangatiratanga of their hapū.

Does the Tribunal agree that the Crown had predetermined its decision to recognise the mandate?

No. The Tribunal found that the Crown's decision to recognise the mandate was not predetermined. It concluded that the Crown's involvement in the mandating process was typified by regular, genuine, and high-level engagement over a period of years and that there was ample evidence of the parties engaging in good faith to accommodate differences.

Does the Tribunal agree that the Tūhoronuku IMA undermines the rangatiratanga of hapū?

Yes. The Tribunal determined that any entity seeking to represent Ngāpuhi in settlement negotiations had to produce clear evidence of hapū support for its mandate. This is because Ngāpuhi is characterised by the strength of autonomy that its constituent hapū enjoy. In this context, where the importance of hapū autonomy was clear to all, the Crown had a primary Treaty duty to actively protect the rangatiratanga of Ngāpuhi hapū in deciding how and by whom they would be represented in settlement negotiations. It failed in this duty by recognising the mandate of the Tūhoronuku IMA in the absence of clear evidence showing that hapū supported its mandate. Further, the structure and processes of the Tūhoronuku IMA undermined hapū and their ability to make crucial decisions affecting the settlement of their claims.

Do the Tribunal's findings mean that a new mandate process must take place?

No. Although the Tribunal has upheld part of the claims, it does not believe that the Crown should withdraw its recognition of the mandate and require that a new mandate process take place. There is broad support within Ngāpuhi for negotiations towards settlement. The

Tribunal believes that the flaws identified in the Tūhoronuku IMA can be remedied so that the Tūhoronuku IMA will be appropriately mandated to lead a negotiation on behalf of Ngāpuhi hapū.

What does the Tribunal recommend?

The Tribunal recommends that the Crown halt negotiations with the Tūhoronuku IMA to give Ngāpuhi the opportunity to address the issues it has identified. An important part of this process will be ensuring that the hapū of Ngāpuhi have the opportunity to determine whether they wish to continue being represented by the Tūhoronuku IMA.

Where can I get a copy of the report?

The pre-publication version of the report is available on the Waitangi Tribunal website in pdf format.