Making the Kāwanatanga Accountable for Te Tiriti: Possible Mechanisms for Fiscal Accountability.

Discussion paper

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Part One: te Tiriti and accountability

Any progress made by Indigenous peoples in advancing accountability within a settler-colony is fragile. At the time of writing, many of the processes that have recently been put in place in Aotearoa New Zealand to make the Crown accountable for te Tiriti o Waitangi are at risk. It is within this context that we finalise this report exploring possible specific and concrete accountability mechanisms for the Crown and its Tiriti obligations. This context highlights the contradiction at the heart of democratic accountability in settler colonies. That is, Crowns/States claim near-exclusive rights to revenue raising and typically use that revenue to go towards resourcing accountability mechanisms, to the limited extent that they are resourced or put in place. On the one hand, adequate resourcing is required for Indigenous self-determination that would build capacity to continue demanding accountability from the kāwanatanga. On the other hand, this cannot be achieved without holding the kāwanatanga to account concerning the resourcing of Indigenous self-determination.

To frame our report, we follow a theoretical and political approach committed to constitutional transformation as set out in Matike Mai Aotearoa.[1] Broadly, this approach sets up spheres of influence based on te Tiriti: a rangatiratanga sphere of influence (Māori authority), a kāwanatanga sphere of influence (Crown/government authority) and a relational sphere of influence where they work together on issues that require shared authority. When the kāwanatanga in its current form funds its own accountability, that accountability can be constrained by the political will towards the funding of such mechanisms and is also subject to the whims of three year political terms. It is because of these constraints that this report explores possibilities to build accountability across multiple mechanisms as well as sites or spheres. This includes explorations of accountability mechanisms within the kāwanatanga sphere, capacity-building for demanding accountability in the rangatiratanga sphere, and possibilities for accountability for these two spheres of influence to each other.

We contextualise this report with two primary issues based on related studies. Firstly, breaches of Article 2 over time have reinforced the Crown's false assumption of sovereignty and exclusive right to taxation. This has radically limited capacity within the rangatiratanga sphere. Tax policy has constrained rangatiratanga and therefore Article 2. Secondly, the promises under Article 3 have failed to manifest within current tax policy and inequity has been reinforced by a regressive tax system. Māori therefore face a double taxation along te Tiriti lines – firstly, impositions on and restrictions of rangatiratanga across sovereigns, secondly, inequitable policy as citizens. These two issues therefore demand a careful consideration of how we might advance fiscal accountability for te Tiriti.

There have been several reports recently on possibilities for accountability in line with te Tiriti.[2] We have been inspired by these reports and build on them with a focus on fiscal accountability. Settler governments are increasingly willing to talk about recognising Indigenous self-determination. They are less willing to talk about resourcing Indigenous self-determination. Article Three of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms that Indigenous peoples have the right to self-determination and can freely

[1] See: The Independent Working Group. (2016). *He whakaaro here whakaumu mō Aotearoa: the report of Matike Mai Aotearoa - the independent working group on constitutional transformation*.

[2] For example: Haemata Limited. (2022). *Māori perspectives on public accountability*; Menzies, D., & Paul, J. (2023). *Te Kāhui Tika Tangata New Zealand Human Rights Commission Housing Inquiry- Discussion Paper: Understanding Accountability for Māori*; New Zealand Institute of Economic Research (NZIER). (2023). *Working together. A report for the New Zealand Productivity Commission*.

determine their political status, and pursue their economic, social, and cultural development.[3] Article 4 states that Indigenous Peoples have the right to autonomy or self-government in matters relating to their internal and local affairs, and ways and means for financing their autonomous functions. Given that settler-state forms typically maintain exclusive right to revenue raising powers, this resurfaces the contradiction above. Because the kāwanatanga does not always, or ever, want to be accountable for te Tiriti, mechanisms and avenues for exercising rangatiratanga must be strengthened, and this requires resourcing. We do not pretend to have a silver bullet in this report. This is a discussion paper and much more research and praxis is required to explore and enact possibilities. However, we explore existing and potential processes from here and abroad that may have features useful for our context.

This report is structured as follows. First, we briefly explore the concept of accountability in te ao Māori, underpinned by tikanga and follow this with an overview of democratic, constitutional, and learning accountability in a more typically Westminster approach. In Part Two we establish the basis for fiscal authority based on promises in te Tiriti, obligations under UNDRIP, and Māori taxation/tax-like practices. In Part Three we explore existing accountability models in Aotearoa New Zealand, including in budgeting and tax policy, other domains, and local/regional models. We continue in Part Four by exploring international models. In Part Five we explore existing *proposals* for accountability under te Tiriti, and we conclude and offer recommendations for discussion in Part Six.

Accountability concepts in the spheres of influence

To understand accountability in each of the spheres of influence set out in Matike Mai, and how they may be mediated in the relational sphere, we need try to grasp the nuances of accountability in each sphere. te Tiriti creates both expectations and legal obligations to act in good faith, and good faith requires accountability.

Rangatiratanga accountability concepts

Tikanga & Mana

Accountability in Māori society must be understood within a set of reciprocal obligations.[4] Whakapapa, for example, is a structured genealogical line to all things. It is the fabric that holds the world together and provides an ontological understanding of relationships between people and the world.[5] Whakapapa connects all living things, past and present, together and encourages individuals within a kinship grouping to make 'uneconomic' (for their individual, short-term position) decisions in favour of the collective progress of the extended kinship group.[6] Obligations are enforced by a careful attention to both tradition and public opinion.[7] We cannot extract accountability relationships from values or the community/context in which these accountability relationships occur. Morgan Godfery suggests that, in aggregate, the Māori constitutional system is based on tikanga which is based on a series of values which regulate political power including whanaungatanga, mana, manaakitanga and

[3] United Nations General Assembly. (2007). *United Nations Declaration on the Rights of Indigenous Peoples.* GA Res 61/295.
[4] Scobie, M., & Love, T. R. (2019). The treaty and the tax working group: Tikanga or Tokenistic gestures? *Journal of Australian taxation, 21(2*), 1-14.
[5] Te Maire Tau, T. (2001). The death of knowledge: Ghosts on the plains. *New Zealand Journal of History, 35* (2), 131-152.
[6] Firth, R. (1959). *Economics of the New Zealand Māori*. (2nd ed.). Wellington, New Zealand: Government Printer.
[7] Mead, H. M. (2003). *Tikanga Māori: Living by Māori values*. Wellington, New Zealand: Huia.

utu. These phenomena characterise Māori politics at a grand scale but also at a functional level and must be studied together in aggregate.[8]

Tikanga is seen as a guide to facilitating the foundations of strong and trusting relationships, and therefore, how accountability can be realised. As such, concepts like pono, aroha, mana, whanaungatanga, kotahitanga and manaakitanga ensure integrity in relationships and are important to understanding what should be done to maintain accountability between parties.

This means accountability in te ao Māori is closely linked to mana, whether at the interpersonal or institutional level**.** As people act to honour and respect agreements, norms or ways of working together, mana is bestowed on them and further trust in the relationship is gained.[9] In instances where parties deviate from an agreement, the mana of either or both parties are compromised, and actions must be taken to restore mana for the sake of the relationship. The relational nature of trust in te ao Māori means active reciprocity is critical to accountability; without tangible steps towards restoration of the agreement and relationship, accountability cannot be achieved.

Reciprocity & Power Relations

Accountability in te ao Māori involves actively working to maintain mutual respect and meaningful relationships. Without honouring the mana of the people in the relationship, trust is undermined. When one partner exercises their power to "shape the narrative to suit its own story", as the Kāwanatanga often do, this undermines the respect and mana of a partnership with Māori, leading to mistrust.[10] For example, deficit narratives perpetuated by the Kāwanatanga, or experiences where the kāwanatanga have ignored Māori voices and perspectives on significant issues, have led to mistrust and breakdowns in relationships. These breakdowns are in addition to the role of the Kāwanatanga in the dispossession of Māori land, resources and self-determining authority. The Kāwanatanga is accountable for restoring the mana of these relationships for a trusting partnership to continue growing.

Trust and relationships are founded on interpersonal, intergroup or shared experiences and the histories of exchanges or agreements are acknowledged as ongoing. Accountability cannot be maintained without meaningful engagement and sustained acknowledgement of what the relationship means according to all parties' values and worldviews. This should be reflected in processes rather than outcomes only and extends to steps towards the reparation of trust. This understanding of accountability means non-financial reparations are equally if not more important than financial measures and may mean that measures ensuring equal outcomes for Māori may be prioritised over other financial measures.[11]

Kāwanatanga accountability concepts

This section introduces another set of accountability factors and concepts taken from a non-Māori or non-Indigenous literature, outlining some aspects involved in accountability from the state to a general population in

[8] Godfery, M. (2016). The political constitution: from Westminster to Waitangi. *Political science, 68* (2), 192-209.
[9] Haemata Limited (2022).
[10] Haemata Limited (2022), p. 15.
[11] Haemata Limited (2022).

a more typically Westminster approach. We think of these as a set of expectations for accountability associated with the kāwanatanga sphere of influence. If we are to develop effective accountability in the relational sphere, we need to understand where these differing expectations meet and depart.

Accountability to te Tiriti in Aotearoa New Zealand is inherently shaped by relations of power. In this sense, mechanisms seeking kāwanatanga accountability to Māori must acknowledge the uneven distribution of power in governance resulting from colonisation, emphasising kāwanatanga obligations and responsibilities, regardless of possible asymmetries.[12] This requires that accountability mechanisms provide for checks in asymmetries to illuminate where relationships and agreements may be undermined.[13]

Types of Public Accountability

Bovens et al.[14] describe three key types of public accountability. Constitutional accountability underscores the obligation to adhere to the rules and norms established in a society and focuses on individual level transgressions from these, including abuse of power. This kind of accountability highlights when transgressions have deviated from rules and norms but does not necessarily aim to prevent them or demand a shift in obligations to prevent further deviation or future related problems. New Zealand currently relies predominantly on constitutional accountability and this contributes to limited change or restoration of relationships when responsibilities or norms are deviated from.[15]

Democratic accountability is focused on procedural mechanisms which help to identify delegation of power and responsibilities. An example of this is the Westminster Parliamentary model, where individual members are delegated specific areas of responsibility. Democratic accountability works to motivate actors towards maintaining transparency. It is less about adhering to collective or societal norms, but rather on adhering to the role delegated.

'Accountability as learning' is a concept that demands the causes or factors linked to a failure to uphold the responsibilities and obligations agreed to by a party or partner are addressed by incorporating these into an accountability mechanism. This is achieved by introducing change or evolution ongoing, as learning occurs. Highlighting shortcomings towards responsibilities or obligations and what needs to change to avoid this re-occurring, identifying and addressing the many causes of failure becomes a critical guard or future-proofing against lack of accountability.[16] Through the persistent targeting towards areas for improving accountability, learning as accountability provides increased transparency while reinforcing the specificities, actions or practices required for upholding responsibilities and obligations.

[12] NZIER (2023).
[13] Bovens, Mark, Thomas Schillemans, and Paul 't Hart. 2008. Does Public Accountability Work? An Assessment Tool. *Public Administration 86* (1): 225–42. https://doi.org/10.1111/j.1467-9299.2008.00716.x.; Pamela Pansardi and Marianna Bindi, (2021), "The new concepts of power? Power-over, power-to and power-with". *Journal of Political Power 14*, no. 1, 51-71.
[14] Bovens et al. (2008).
[15] NZIER (2023).
[16] NZIER (2023).

Part Two: Taxation, te Tiriti o Waitangi & rangatiratanga

Māori never ceded sovereignty, and were guaranteed rights over lands, villages and resources in Te Tiriti o Waitangi. There are several bases for why these rights should include fiscal authority.

A related study assembled a brief but troubled history of resourcing, kāwanatanga and colonisation in order to historically situate possibilities for the future of resourcing rangatiratanga.[17] Taxation has resourced the kāwanatanga sphere, while contributing to dispossession in the rangatiratanga sphere and gradually erased Māori sovereignty through Crown assumptions. This challenges rangatiratanga by recasting Māori from sovereigns to engage with, to citizen subjects of the Crown.

In another related study, it was argued that Māori likely had expectations of taxation and tax-like practices as part of the right to authority over Māori lands, villages and resources.[18] Cases of tax-like practices included customary distribution practices; harbour dues, toll ways, stock grazing fees and fines and joint stock subscriptions following contact. All of these raised collective revenues and asserted rangatiratanga. This supports the argument that taxation is a guarantee under Article 2 of te Tiriti, although Māori need not have been actively engaging in particular practices in the past to guarantee Tiriti rights. With the combination of this and article 4 of UNDRIP there is a strong basis for revising revenue raising in Aotearoa New Zealand and how we might equitably resource rangatiratanga. This report exploring possible mechanisms for fiscal accountability in line with te Tiriti is the necessary sequel to the two studies described above.

In addition to the tax-like practices described in the above studies, below we outline three additional examples of Māori asserting a level of fiscal authority to demonstrate how this has evolved since te Tiriti.

Examples of Māori fiscal authority

Komiti rūnanga

Komiti rūnanga, sometimes referred to as 'unofficial' district rūnanga, are an example of Māori autonomy and resistance to colonial authority demonstrating dynamic political and economic responses throughout the decades that followed the signing of te Tiriti in many regions.[19] As a kind of 'reinvention' of previous traditions of tribal assemblies, komiti rūnanga were an important local-level function from the 1850s for maintaining protocols and the restoration of transgressions, while resisting settler governance models and attempts to control Māori affairs.[20] Composed of Rangatira, clergy and sometimes other hapū members, and ranging

[17] Scobie, M., Heyes, A., Evans, R., & Fukofuka, P. (2023). Resourcing rangatiratanga as part of constitutional transformation: taking equity and sovereignty seriously. *Kōtuitui, 18(4),* 402-419.

[18] Scobie, M., Willson, H., Evans, R., & Williams, M. (2023). Tax justice and Indigenous sovereignty. *Journal of Australian taxation*, *25*(2), 33-53.

[19] According to O'Malley terminology used to describe the 'unofficial' or autonomous district rūnanga changed over time, shifting between 'komiti rūnanga', 'Māori Committees' and 'rūnanga'. We employ 'komiti rūnanga' throughout our account when referring to autonomous rūnanga, distinguishing these from the attempted kāwanatanga co-option of these to form 'official' rūnanga. See: O'Malley, 'Reinventing Tribal Mechanisms of Governance'.

[20] O'Malley, V. (2009). Reinventing Tribal Mechanisms of Governance: The Emergence of Maori Runanga and Komiti in New Zealand Before 1900. *Ethnohistory*, *56*(1), 69-89.

between dozen to seventy members, komiti rūnanga carried out tribal or hapū land title or other dispute negotiations as an alternative avenue to the Native Land Court,[21] while also addressing some social transgressions and resolutions.

A range of komiti rūnanga activities also reflect the exercise of tax-like practices, including the collection of compensation either on behalf of rūnanga or 'victims' of transgression. In Whanganui in 1877, komiti rūnanga concurrently settled disputes alongside the Resident Magistrate, who himself also incorporated Māori customs.[22] The co-existence of these systems is regarded as successful because the fines levied remained in the rūnanga, under Māori control. Komiti rūnanga in Waikato in 1857 also set fees for temporary pasturage, passage or shelter for settlers travelling through their land, including ferrying people across rivers.[23] One account details how Ngāpuhi and Muriwhenua rūnanga combined a practice akin to an 'ability to pay' principle within tikanga Māori[24], ensuring the successful collection of large fines against rangatira of significant mana, as well as for transgressions that might be perceived as relatively minor in Pākehā society.[25]

Rūnanga were determined to maintain this autonomous political order, resisting repeated attempts by the kāwanatanga to systematically co-opt their activities or jurisdiction, including through the introduction of the Native Committees Act in 1883.[26] As government officials attempted to make the komiti rūnanga official in Northland, iwi expressed great anger in resistance and explicitly asserted their right to maintain the collection of fines.[27] Komiti rūnanga continued to resist these attempts into the 1880s and 1890s, performing "many of the functions of local government bodies and magistrates courts", including dispute resolution over matters such as supplying liquor on a marae, and instances of assault, rape, theft and adultery.[28]

Kīngitanga: King Tāwhiao & Te Kauhanganui

Several examples of tax-like practices are demonstrated in relation to the Kīngitanga and the second Māori King Tāwhiao. Early records confirm Tāwhiao's authority over the receipt of subscription fees for flour mills, and rents on behalf of those leasing land and wages (or 'pensions') of Māori assessors.[29] Establishing the Kauhanganui or 'House of Assembly' at Maungakawa in 1892, Tāwhiao appointed ministers for lands, laws, justice and taxes and 10 justices of the peace with powers to levy fines for the Kauhanganui treasury.[30] A Kīngitanga bank, Te Peeke o Aotearoa, was also established.[31]

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[21] Williams, J. A. (1969). *Politics of the New Zealand Maori: protest and cooperation*, 1891-1909. Oxford University Press for the University of Auckland.

[22] O'Malley, V. (1998). *Agents of autonomy: Māori committees in the nineteenth century*. Huia.

[23] Ward, A. (1995). A show of justice racial "amalgamation" in nineteenth century New Zealand. Auckland University Press.

[24] The 'ability to pay' or 'contribution proportionate to ability' principle is a dimension of 'equity' in many Western tax principle frameworks including in New Zealand, where 'fairness' is established by those who can pay higher taxes based on their income, paying a greater amount of tax.

[25] O'Malley, V. (2007). English law and the maori response: A case study from the Runanga system in Northland, 1861-65. *The Journal of the Polynesian Society*, *116*(1), 7-33.

[26] O'Malley (1998); O'Malley (2007).

[27] O'Malley (2007).

[28] Williams (1969).

[29] Waikato Times. (1881, 21 May)."The Hikurangi Native", p. 2.

[30] Williams (1969), p. 45.

[31] Comyn, C. (2023). Te Peeke o Aotearoa: colonial and decolonial finance in Aotearoa New Zealand, 1860s–1890s. In P. R. Gilbert, C. Bourne, M. Haiven, & J. Montgomerie (Eds.), *The entangled legacies of empire: Race, finance and inequality*.

Constitutional offences resulting in fines extended to liquor consumption and cattle trespasses, while charges for hunting were also imposed on visitors. One account explains how two "Pakeha [sic] Cambridge men" seeking to hunt pigs near Maungakawa were required to purchase a ten shillings license.[32] Kingite committees would also hear cases and enforce fine collection, assigning "Māori constables to seize property when fines were not paid."[33]

The Kīngitanga unsurprisingly resisted colonial taxes while also actively seeking to improve fiscal and economic arrangements with the kāwanatanga. Concerning the colonial dog tax resisted by other hapū, the Kīngitanga refused to pay this, instead collecting their own dog tax.[34] Tāwhiao and Te Kauhanganui also levied a poll tax, collecting 2 shillings for all Māori four years old or older, although records show at least one group refused to pay this.[35] A person "with mana within his own hapu or iwi" would collect the poll tax on behalf of Kauhanganui at a specified location annually.[36]

Revenue collections and the operation of the Kauhanganui treasury continued following the death of Tāwhiao into the late 1890s.[37] Kauhanganui representatives proposed several changes to colonial fiscal arrangements during these years. These included the removal of taxes on Māori land, a repeal of the dog tax and the abolition of the Native Land Court, as well as a Māori Council Constitution Bill which would introduce a 56 Māori member council with powers over Māori land, all fishing waterways and grounds, levying of the dog tax and land taxes, and liquor licensing.[38]

Te Kotahitanga: National Māori Congress (1990s)

In 1988, the work carried out by the Department of Māori Affairs was integrated into a smaller 'Ministry of Māori Policy' or absorbed into other mainstream departments. All kāwanatanga departments were to be guided by the evolving Treaty principles and work to increase equitable outcomes for Māori, but the restructure marked a shift away from how Māori policy was resourced within the kāwanatanga. Māori leaders responded with calls for political unity, forming the inter-tribal National Māori Congress, with representatives from all over the country, including over 60 Iwi, 15 Roopu, 25 rūnanga, the Māori Queen, Dame Te Atairangikahu, and three of the four Māori Members of Parliament.[39]

The Congress was funded by iwi, hapū and Congress members to maintain autonomy from the kāwanatanga from the outset. The initial hui required a registration fee from each iwi delegate with the distinct aim that the body would "stand upon its own resources."[40] Early operating and set-up costs were covered by the Iwi Transition Agency (ITA), but pursuit of this source ceased when it was realised how this would compromise autonomy.[41]

Manchester University Press, 73-88; Park, S. (1992). Te Peeke o Aotearoa: The Bank of King Tawhiao. *New Zealand journal of history*, *26*(2), 161–183.

[32] Park (1992), p.175.

[33] Williams (1969), p. 45.

[34] Williams (1969); Comyn, C. (2021). The Hokianga Dog Tax Uprising. *Counterfutures*, *11*, 19–33.

[35] Williams (1969), p. 45.

[36] Park (1992), p.176.

[37] Ibid, p.179.

[38] Williams (1969).

[39] Walker, R. (1990). *Ka whawhai tonu mātou (Struggle without end)*. Penguin.

[40] Cox, L. (1991). *Kotahitanga: the search for Māori political unity* [Massey University]. Palmerston North, p. 164.

[41] Ibid.

Iwi members pledged $5,000 per annum each towards costs and a fundraising committee to supplement this system was established, all to uphold the ongoing independence of the Congress.[42] Hui thereafter- attended by between 60 – 200 or more Congress Executive members- were hosted by different tribes to share these costs.[43]

In this section we have established a basis for fiscal authority and rangatiratanga. We demonstrated diverse practices of fiscal authority within the rangatiratanga sphere throughout the 19th century. But throughout the late 19th and 20th centuries, the kāwanatanga gradually assumed exclusive fiscal authority. Matike Mai Aotearoa and the UNDRIP give us tools to challenge this assumption, creating space for resourcing rangatiratanga, and highlighting accountability within the relational sphere is particularly important.

Part Three: Aotearoa New Zealand accountability models

Current budgeting & tax policy accountability

Within the kāwanatanga, the standard budget process is as follows:

> "Every year, the Treasury works closely with Cabinet and Ministries to prepare the Crown's Budget. The Minister of Finance presents the Budget to Parliament for scrutiny and approval. The Budget provides detailed information on planned spending and how the spending will be financed from taxes and other sources. The Budget also explains new policies intended by the government to support its overall economic objectives. The Public Finance Act 1989 sets out strict requirements on how the Budget documents must be presented to Parliament. The Budget's financial statements, for example, must be prepared in accordance with generally accepted accounting practice. Further, the Government must pursue its policy objectives in accordance with the principles of responsible fiscal management listed in section 26G of the Act. Section 26G does not mention the principles of the Treaty" - Dalziel et al., 2023.[44]

> "The first step in the Budget Process develops an overall strategy. This is published in the Budget Policy Statement (BPS) which sets out priority wellbeing objectives... ...Once the Strategy is approved, the next step is for Cabinet to decide on the contents of the Budget. Ministers put forward proposals, which are assessed by Treasury officials with recommendations. These are considered by Cabinet committees and by the Budget Ministers before the final package is approved by Cabinet. The Treasury and agencies then prepare the Budget documents for presentation to Parliament. This part of the Budget Process is almost exclusively a matter for Ministers and government departments (the Executive). It takes place under strict 'Budget Secrecy'."[45]

It is this almost exclusive right by the Executive to preparing and passing the budget, under secrecy, that challenges any sort of fiscal accountability in line with either the principles or articles of te Tiriti. Some mechanisms within the kāwanatanga have made incremental advances regarding this challenge.

[42] Ibid, p. 162.
[43] Ibid, p. 179.
[44] Dalziel, P., Scobie, M., Reid, J. and Tau, T. (2023). *The Crown's Annual Budget Process and the Principles of te Tiriti o Waitangi: An Issues Paper.*
[45] Ibid, p. 42-43.

Wellbeing Budgeting & He Ara Waiora

A 'wellbeing approach' to public expenditure in New Zealand, officially introduced into the budget process in 2018, establishes a set of goals, priorities and frameworks designed to incorporate a range of social, economic and environmental measures into the formulation of policy and expenditure.[46]

A 'wellbeing approach' is closely related to the capabilities approach which underscores how people should be supported to "live the lives they value and have reason to value."[47] A wellbeing approach emphasises how a range of factors must be accounted for to understand how a population is going and what policies are required to improve the lives of that population.[48]

The Living Standards Framework (LSF) and He Ara Waiora are two distinct frameworks designed by the Treasury used to measure wellbeing of the population and population groups, including Māori as a specific group. They are designed to be "complementary" to each other and supplement department or agency-level evidence and advice.[49] The Public Finance (Wellbeing) Amendment Act 2020 & Treasury's Wellbeing Analysis also require that wellbeing indicators and objectives are incorporated into policy and expenditure.

Living Standards Framework

The Living Standards Framework is a dashboard used by kāwanatanga departments for analysing population outcomes that draws on a broad set of data held at a national level. The data is drawn on to produce a set of 'wellbeing indicators' designed by the Treasury, categorised into four 'capitals' that measure financial and physical, human, social and natural 'capitals' or capability levels.

He Ara Waiora

He Ara Waiora was developed as a wellbeing framework by Ngā Pūkenga for the Tax Working Group in 2017. The Treasury has stated that He Ara Waiora is their "primary approach to incorporating te ao Māori perspectives into policy development."[50] According to the Treasury, the framework is a mātauranga Māori perspective of wellbeing, designed to recognise the interrelated role cultural factors, including te ao Māori values and perspectives, play in wellbeing and is based around concepts which describe both the "means" and the "ends" for wellbeing within te ao Māori. According to Treasury, the ends that are sought in He Ara Waiora are wellbeing of wairua, meaning spiritual or overall wellbeing; te taiao or the natural world or environment and; te ira tangata or relationships and human exchanges or activities, including mana and relationships of authority.[51] The means to these ends include kotahitanga or "working in an aligned, coordinated way", tikanga or "making decisions in accordance with the right values and processes, including in partnership with the Treaty partner", tiakitanga or

[46] Weijers, D., & Morrison, P. S. (2018). Wellbeing and public policy - can New Zealand be a leading light for the 'wellbeing approach'? *Policy Quarterly*, *14*(4), 3-12.
[47] Sen, A. (1984). *Collective choice and social welfare* (Expanded 2017 ed.). Amsterdam; New York.
[48] Dalziel, P, Saunders, C. and Saunders, J. (2018). *Wellbeing Economics: the Capabilities Approach to Prosperity*. Springer International Publishing, Palgrave Macmillan.
[49] Smith, C. (2018). *Treasury Living Standards Dashboard: Monitoring Intergenerational Wellbeing*; The Treasury New Zealand. (2021b). *The Living Standards Framework 2021*, p. 7.
[50] The Treasury New Zealand. (2021b), p. 6.
[51] The Treasury New Zealand. (2023). *He Ara Waiora*.

“guardianship, stewardship (e.g. of the environment, particular taonga or other important processes and systems)” among others.[52]

Scobie and Love examined proposed He Ara Waiora models in 2019 and highlight how the risk of tokenistic or diluted approaches to working with these frameworks can limit authentic consideration with te ao Māori perspectives of wellbeing for policy.[53] They point out that incorporating kaitiakitanga, without including rangatiratanga undermines the significance of this concept and how it contributes to wellbeing.

The current He Ara Waiora model incorporates four different ‘relational’ aspects that are considered “ends” towards wellbeing. These include ‘mana tauutuutu’, described as “participate and connect within their communities, including fulfilling their rights and obligations” and “mana āheinga”, outlined as having “the capability to decide on their aspirations and realise them in the context of their own unique circumstances” but does not include or acknowledge rangatiratanga.[54]

He Ara Waiora represents the potential to establish deeper engagement with te ao Māori during the policy process and more sustainable and equitable policy for Māori and the broader population, but this involves meaningful, committed and ongoing engagement with and by Māori.[55] The Treasury has stated that they are maintaining relationships with different communities, including with Māori, as the framework continues to be used.[56] More transparency around the nature of this stated engagement with Māori during and after the development of He Ara Waiora or how the Treasury is working to maintain engagement and relationships with Māori generally is required to understand the capacity of He Ara Waiora as an accountability mechanism. This is especially so given the budget secrecy described above. For example, Dalziel et al., point out that "The 2023 BPS included Māori and Pacific Peoples as an example where Crown investment would have a significant impact on enhancing wellbeing over time. This is not the same as engaging Māori as Tiriti partners in the Budget process."[57]

Public Finance (Wellbeing) Amendment Act 2020

The Public Finance (Wellbeing) Amendment Act 2020 (the Act) requires the kāwanatanga fiscal strategy report to include explanations on “how wellbeing objectives have guided the Government’s Budget decisions.''[58] The Act also requires the Minister of Finance to produce a ‘wellbeing report’ at least every four years outlining “the state of wellbeing in New Zealand'', changes to this over time and risks to future wellbeing using specific indicators.[59] While these requirements go some way to promoting accountability and transparency to wellbeing improvement, the reporting period is relatively infrequent and there are no statutory requirements demanding broader accountability beyond this. There are no specific references to te Tiriti/the Treaty in this Act.

[52] Ibid.
[53] Scobie, M., and Love, T. R. (2019). The treaty and the tax working group: Tikanga or Tokenistic gestures? *Journal of Australian taxation*, *21*(2), 1-14.
[54] The Treasury New Zealand (2021a). *He Ara Waiora - A brief overview*, p. 1.
[55] Scobie and Love (2019).
[56] The Treasury New Zealand (2021b), p. 9.
[57] Dalziel et al. (2023).
[58] "Public Finance (Wellbeing) Amendment Act 2020," s. 6(5).
[59] "Public Finance (Wellbeing) Amendment Act 2020," s. 26NB.

The Generic Tax Policy Process

The Generic Tax Policy Process (GTPP) was developed with the aim to establish a clear structure around the tax policy process, to clarify the various roles and responsibilities involved, to ensure sufficient consultation, increased transparency and improved advice standards.[60] The framework was adopted following recommendations from the Richardson Committee in 1994 and has since remained in use. However, instances of suspending the process or exceptions built into the process through parallel policy have raised concerns in recent years.[61] The process involves five stages, outlined below.

1. Strategic: to determine how the policy sits within broader economic and fiscal strategy;

2. Tactical: to ensure a work programme and adequate resourcing are scheduled;

3. Operational: involving policy design and formal consultation, as well as ministerial and cabinet approval;

4. Legislative: to incorporate policy recommendations and establish legislation; and 'implementation and review' for enacting the policy and ensuring review as well as revision where needed.

While all stages are designed to work together to increase the level of scrutiny and transparency around the tax policy process, the GTPP brings added emphasis to the importance of consultation with public stakeholders.[62] As a process or framework, the GTPP is a 'Cabinet directive' designed to create norms and expectations around the policy process and does not legislate or enforce the steps and stages it sets out.[63] The application of the GTPP is, therefore, open to variation and uncertainty, and may even be used to depoliticise tax policy.[64]

Despite being in use for nearly three decades the GTPP has been 'put to one side' on several significant occasions, including during tax policy formulation in 2020 and 2021. These instances excluded all consultation and engagement in close analysis with officials, despite the scope of the impact the policy changes would have on the public.[65] Inland Revenue's 'Tax and Social Policy Engagement Framework' introduced in 2019 also creates a series of exemptions to the GTPP, ostensibly to ensure "consultation processes are flexible and not overly prescriptive."[66] During consultation with the Finance and Expenditure Select Committee for the Taxation Principles Reporting Act in 2023 the kāwanatanga also avoided the GTPP. The New Zealand Law Society has suggested this resulted in a lack of accord around the 'core' tax principles selected which underpin the reporting mechanism of the Act.[67]

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[60] Sawyer, A. (2020). *The Effectiveness of Tax Reviews in New Zealand: An Evaluation and Proposal for Improvement*. Centre for Commercial and Corporate Law Inc., p. 42.

[61] New Zealand Law Society. (2023). *Law Society seeks improvements to Taxation Principles Reporting Bill*; Sawyer, A. (2022). Tax policy without consultation: Is New Zealand on a "slippery slope"? *Australian tax forum*, *37*(4), 481-513.

[62] Sawyer (2020), p. 43.

[63] Sawyer, A. (2013). Reviewing tax policy development in New Zealand: Lessons from a delicate balancing of 'law and politics'. *Australian tax forum*, *28*(2), 401-425.

[64] John Cantin in: Baucher, T. (2021). *How Do You Solve a Problem Like Dual Purpose Expenditure?*

[65] Sawyer (2022).

[66] Inland Revenue. (2019). *Tax and Social Policy Engagement Framework*, p. 16.

[67] New Zealand Law Society (2023).

These exceptions undermine the GTPP as a robust accountability mechanism for adhering to certain levels of analysis, engagement, transparency or consultation around the tax policy process. Such standards are reflected in the failure to adequately include Māori voices or interests in the development of tax policy, including the consultation or submissions processes.[68] Knowledge around what Māori value in a tax system is absent when they are excluded from these processes and the GTPP should be part of ensuring this is not the case.[69]

Tax Principles Reporting Act 2023

The Taxation Principles Reporting Act 2023 was repealed under the newly elected National-led coalition government in December 2023. The Minister for Revenue stated at the time that repealing the act without delay removed "the restrictive descriptors of tax principles set out in the Act" for future governments.[70] Repealing the Act under urgency prevented the first report on the status of the principles in tax policy, due at the end of 2023, from being published. For the purposes of considering the extent of accountability available under such a mechanism is worth examining what this Act had required, although the ease with which the legislation repealed following the change in kāwanatanga only serves to highlight the constraints of seeking accountability through mechanisms like this.

The Taxation Principles Reporting Act 2023 (the Act) required regular statutory reporting from the Commissioner of Inland Revenue (IR), making public the status of the tax system concerning a set of 'core' tax principles.[71] The aim of the reports was to increase public transparency, consistency and informed debate on tax policy developments in New Zealand. The principles include horizontal equity, efficiency, vertical equity, compliance and administrative costs, certainty and predictability, flexibility and adaptability. Definitions of these for the purposes of reporting were outlined in the Act and are measured using income distribution and income tax paid, the distribution of exemptions from tax and of lower rates of taxation, integrity perceptions of the tax system, and compliance levels.[72]

While the Tax Principles Reporting Bill originally contained an explicit reference to the public service's obligations to te Tiriti o Waitangi, this was removed during the Select Committee process due to the existing obligations in the Public Service Act 2020.[73] During this process an additional requirement for the Commissioner's report to "take into account the impact of the tax system on different communities of taxpayers within New Zealand" was added to the Act, with the Finance and Expenditure Select Committee (FESC) suggesting that this encapsulates Māori experiences of the tax system and "reflects" public service obligations for Crown-Māori relations.[74]

Situating obligations to Māori under the banner of "different communities" in New Zealand obscured the fact that Māori hold a specific relationship with the Crown and the public service, or Commissioner of IR. While the

[68] Marriott, L. (2021). Crown Consultation, Māori Engagement, and Tax Policy in Aotearoa New Zealand. New Zealand journal of taxation law and policy, 27(2), 142-171.
[69] Ibid.
[70] Watts, S. (2023). *Taxation Principles Reporting Act Repeal Bill — Third Reading*.
[71] Inland Revenue. (2023). *Tax Principles Reporting Bill passes*. Inland Revenue.
[72] "Tax Principles Reporting Act 2023," s. 12.
[73] Finance and Expenditure Select Committee. (2023). *Taxation Principles Reporting Bill - Final Report of the Finance and Expenditure Committee*.
[74] Ibid, p. 4.

Public Service Act 2020 does reflect these obligations, the opportunity to link this piece of legislation to kāwanatanga obligations te Tiriti was overlooked.

The Act also allowed the Commissioner to add or remove measurements from the legislation (and therefore, reporting) whenever these are deemed "inappropriate for the purpose of this Act" with two months minimum prior to reporting.[75] Highlighting this aspect of the Act during the review of the bill, the New Zealand Law Society stated the ability for the Commission to change these without consultation meant the reporting framework lacked protection from being politically undermined or compromised and recommended that the bill not proceed in this form.[76]

We started this section outlining the typical public budgeting process, with its budget secrecy, and pointed out how this is not in line with te Tiriti partnership. We then outlined how this approach has been incrementally updated to include two distinct but related frameworks that create space for alternative ways of budgeting, that hold potential for deeper engagement with te ao Māori during the policy process. These still have limitations when it comes to te Tiriti and tino rangatiratanga. The Generic Tax Policy Process is another possible accountability mechanism to include te Tiriti outcomes, but recent exceptions have undermined this as robust. Finally, the Tax Principles could be developed to include te Tiriti outcomes in tax design. All of these are *possible* mechanisms for how the kāwanatanga can be accountable for te Tiriti and fiscal authority. Though none are silver bullets, and all are subject to the swings and roundabouts of the kāwanatanga. This leads us to pursue possible accountability mechanisms in other domains that may be more enduring, which we could then apply to this domain.

Existing accountability mechanisms in other domains

Existing processes for fiscal accountability between the spheres is limited because of the exclusive assumption of the kāwanatanga over taxation and public expenditure. However, in other domains this assumption has been relaxed or was never made. This provides models to borrow from to positively influence fiscal accountability.

The Waitangi Tribunal

The Waitangi Tribunal (the Tribunal) is the most prominent independent mechanism for Māori to hold the kāwanatanga to account. Established under the Treaty of Waitangi Act 1975 as a permanent commission of inquiry, the Tribunal examines claims of alleged breaches of the Treaty, with regard to both the English 'Treaty of Waitangi' and reo Māori 'te Tiriti o Waitangi' versions and the 'principles' derived from these. The Tribunal has the 'exclusive authority' to decide on the effect of the Treaty principles considering a claim, including on any issues emerging from differences in the two texts.[77]

Composed of both Māori and Pākehā members, including Māori Land Court judges and other specialist legal or historical individuals, the Tribunal has developed a "rich Treaty principles jurisprudence"[78] which emphasises

[75] "Tax Principles Reporting Act 2023", s. 13.
[76] New Zealand Law Society (2023).
[77] Treaty of Waitangi Act 1975, s. 5.2.
[78] Ruru, J. (2017). The Waitangi Tribunal. In M. Mulholland & V. Tawhai (Eds.), *Weeping Waters: The Treaty of Waitangi and Constitutional Change*. Huia Publishers, p. 112.

partnership, reciprocity and that the Crown must "exercise its kawanatanga with due respect for tino rangatiratanga."[79]

The Tribunal commissions extensive reports documenting evidence inquiries, which may take years to complete or reach recommendations for the kāwanatanga. The implementation of Waitangi Tribunal recommendations must be reported on annually under section 8I of the Treaty of Waitangi Act 1975.[80]

Over the last two decades, the Tribunal's agenda has been focused on district inquiries, hearing historical claims from designated groupings, hapū or iwi by region- some of which have negotiated with the kāwanatanga without entering the inquiry process. This approach was established due to the extensive workload and resourcing levels stretching the capacity of the Tribunal, but also to reduce inequities arising out of the existing lengthy processes where claimants heard first were benefitting while others were delayed.[81]

It is worth noting that as a mechanism for accountability but appointed by the Crown, the Tribunal remains bound to the resource limitations imposed on it. Under-resourcing has been highlighted as a persistent issue affecting the progress and general operation of the Tribunal by Judges, politicians and Tribunal members and reduced funding or the abolition of the Tribunal has also been threatened on several occasions.[82] Resourcing issues ultimately limit the work the Tribunal can carry out and the level of accountability exercised.[83] Finally, given the coalition agreement between National and New Zealand First that promises to "amend the Waitangi Tribunal legislation to refocus the scope, purpose, and nature of its inquiries back to the original intent of that legislation" even this enduring mechanism is still at risk of political interference.[84] Given that the original Act only authorized the Tribunal to investigate breaches after 1975, this agreement is especially worrying.

In 2014 the 'kaupapa' inquiry process was introduced to respond to a range of issues of national significance which could not be addressed using the existing processes. A kaupapa inquiry concerns issues effecting Māori across a region, group or collective. The scope is subsequently broad in nature and ultimately determined by the claimants. Kaupapa claims are prioritised according to several criteria including the immediacy of the potential solutions, the seriousness of the alleged breach and the importance of the claim to Māoridom.[85] Kaupapa inquiries assess evidence concerning the cumulative impact of negligence over time, establishing a greater focus on the contemporary impacts of kāwanatanga policies and practices.

Findings related to these inquiries have resulted in significant kāwanatanga policy changes. For example, the Health Services and Outcomes Inquiry or Hauora Inquiry (Wai 2575) assessed Māori health and the health system from the enactment of the *New Zealand Public Health and Disability Act (NZPHDA)* in 2000 to the present. It was found that the kāwanatanga has been in serious breach of the Treaty/te Tiriti by failing to hold the primary health

[79] Waitangi Tribunal. (2004). *The Mohaka Ki Ahuriri Report (Wai 201)*, p. 28.
[80] For example, see: New Zealand Government. (2022). *Waitangi Tribunal Claims Update: Section 8I Report 1 July 2021 and 30 June 2022*.
[81] Ward, A. (1997). *National Overview: Volume I* (Waitangi Tribunal Rangahaua Whanui Series, Issue, p. xiv.
[82] Hamer, P. (2015). A quarter-century of the Waitangi Tribunal: Responding to the challenge. In J. Hayward & N. R. Wheen (Eds.), *The Waitangi Tribunal: Te Roopu Whakamana i te Tiriti o Waitangi* (Second ed.). Bridget Williams Books.
[83] Fisher, M. (2015). Balancing rangatiratanga and kawanatanga: Waikato-Tainui and Ngāi Tahu's Treaty settlement negotiations with the Crown.
[84] New Zealand National Party and New Zealand First (2023), p. 10.
[85] Waitangi Tribunal. (2019). *Memorandum to the Chairperson Concerning the Kaupapa Inquiry Programme*, p. 3.

sector to account where inequities in the health system were left unaddressed and underfunded.[86] These findings led to the creation of Te Aka Whai Ora or the Māori Health Authority, alongside other objectives in health planning and strategy for Māori. Unfortunately, Te Aka Whai Ora is also set to be abolished under the 2023 coalition agreements between National, New Zealand First and the ACT Party.[87]

The Tribunal's formal powers are confined to the claims process. Recommendations do not effect court powers around te Tiriti/ the Treaty and are not legally binding.[88] This means that while recommendations have been to varying degrees accepted and subsequent redress, apologies and financial compensation enacted, a considerable amount have also been ignored or overlooked. Without the obligation to fully implement recommendations, the kāwanatanga is not prompted to break with colonial myths and narratives that would bring about more significant shifts in power and accountability.[89]

The Tribunal provides a forum which requires the kāwanatanga to hear about possible Tiriti breaches from iwi-Māori at a great level of detail and some Māori claimants have found value engaging in the Tribunal process.[90] While the jurisdiction of the Tribunal limits the overall impact on accountability the Tribunal can have for Māori, the authority to interpret and determine meaning from both the English and Māori treaty texts also underscores the significance of the Tribunal as a mechanism.[91] In the process of engaging with historical inquiries the Tribunal is statutorily obligated to establish "the truth of what happened", for whom and what this signifies for the Treaty and claimants.[92] This has helped to undermine ideas of established, 'objective' narratives and "unravelled carefully woven Crown myths."[93] Many breaches brought to the Tribunal have also been supported, particularly since the first Māori chair was appointed in 1980.[94]

The demands of the Treaty claims process on claimants can also undermine some of its potency for accountability. The Treaty claims process is generally disproportionately resource intensive for claimants, often involving very high financial costs, exhaustion and in some instances traumatising or highly divisive experiences for Māori.[95] Bound to work within "a non-Māori framework for a non-Māori process" is also sometimes seen as a high cost for Māori seeking redress or reconciliation from the kāwanatanga.[96] While claims may be supported, extent of redress is often limited considering the outcomes. This is highlighted by the stark fact that less than

[86] Waitangi Tribunal. (2021). *Hauora report on stage one of the health services and outcomes inquiry*.
[87] New Zealand National Party and New Zealand First (2023), p. 8; New Zealand National Party and ACT New Zealand (2023), p. 8.
[88] Recommendations over former state-owned enterprise land may be legally binding, where the Tribunal may order the return of this land to Māori.
[89] Mutu, M. (2019). The Treaty Claims Settlement Process in New Zealand and its Impact on Māori. *Land (Basel)*, *8*(10), 152.
[90] Ruru (2017), p. 113.
[91] Melvin, G. (2015). The jurisdiction of the Waitangi Tribunal. In J. Hayward & N. R. Wheen (Eds.), *The Waitangi Tribunal: Te Roopu Whakamana i te Tiriti o Waitangi* (Second ed., pp. 15-28). Bridget Williams Books.
[92] Byrnes, G., & Ritter, D. (2008). Antipodean Settler Societies and their Complexities: the Waitangi Process in New Zealand and Native Title and the Stolen Generations in Australia. *Commonwealth & comparative politics*, *46*(1), 54-78.
[93] Mutu (2019), p. 161.
[94] Byrnes, G. (2004). *The Waitangi Tribunal and New Zealand history*. Oxford University Press.
[95] Mutu (2019), p. 152.
[96] Mutu (2019), p. 160.

one per cent of the value of stolen land has been returned through Treaty settlements when calculated as an average.[97]

Housing: MAIHI Ka Ora

Housing is a critical area of accountability for Māori and te Tiriti, with the current experience of housing for Māori recognised as "both multi-faceted and based on a long history of Treaty breaches and land loss."[98] While a housing kaupapa inquiry with the Waitangi Tribunal is currently underway, the 30-year Māori and Iwi Housing Innovation Framework for Action *(MAIHI Ka Ora*) policy was launched in 2020 under the previous Labour Government in partnership with representatives from the National Iwi Chairs Forum, hapū, iwi and Māori housing providers. *MAIHI Ka Ora is designed* to broaden work and action across the entire housing system in ways that enhance connection, collaboration, investment and partnership with Māori.[99]

MAIHI Ka Ora General Structure

MAIHI Ka Ora aims at addressing the housing system for Māori from policy through to delivery. Notably, the policy is aligned with the articles of te Tiriti rather than the 'Treaty principles.'[100] To achieve a Māori led approach to housing, *MAIHI Ka Ora* aims to have Māori experiences inform the strategy via 'feedback loops' including the Whare Wānanga.[101] Reviews are carried out at a three-yearly cycle by key partnering agencies including Te Puni Kōkiri (Ministry for Māori Development or TPK) and Te Tūāpapa Kura Kāinga or Ministry of Housing and Urban Design (HUD). Funding for *MAIHI Ka Ora was* committed through a four-year budget initiative. There are no legislative commitments to the strategy and funding beyond the prior Government Policy Statement (GPS) on Housing and Urban Development.[102]

MAIHI Whare Wānanga

The *Whare Wānanga* is a mechanism for responses around the *MAIHI Ka Ora* objectives. Taking the form of an annual forum between representatives from the Māori housing sector, including iwi, hapū and Māori organisations, local government and the Associate Minister for Housing (Māori Housing), *Whare Wānanga* is a venue for information sharing, particularly concerning the barriers and solutions for improving outcomes.[103]

The *Whare Wānanga* is designed to foster collective direction and reciprocity aligned with te ao Māori perspectives of responsibility, obligation and accountability. The focus on in-person engagement reflects tikanga Māori principles of accountability and reciprocity while increasing the potential for feedback and transparency

[97] Belgrave, M., Kawharu, M., Williams, D. V., & Kawharu, I. H. (2005). *Waitangi revisited: perspectives on the Treaty of Waitangi*. Oxford University Press.
[98] Cram, F., Hutchings, J., & Smith, J. (2022). *Kāinga tahi, kāinga rua: Māori housing realities and aspirations*, p. 5.
[99] Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Design. (2020). *Cabinet Paper: Te Maihi o te Whare Māori – the Māori and Iwi Housing Innovation (MAIHI) Framework for Action*, p. 2.
[100] Menzies and Paul (2023), p. 38.
[101] Te Tūāpapa Kura Kāinga (2020), p. 6.
[102] Concerning the GPS and funding, see: Te Tūāpapa Kura Kāinga - Ministry for Housing and Urban Development. (2021). *Te Tauākī Kaupapa Here a te Kāwanatanga mō te Whakawhanake Whare, Tāone anō hoki - Government Policy Statement on Housing and Urban Development*; Te Puni Kōkiri. (2022). *Whai Kāinga Whai Oranga*.
[103] Hui were twice a year for the first year of implementation.

over time.[104] According to HUD these principles also foster ways for the kāwanatanga to align policies and programmes with obligations to te Tiriti o Waitangi.[105] The Associate Minister for Housing (Māori Housing) also had specific responsibilities under the policy, indicating accountability at a leadership level.[106]

The *Whare Wānanga* does not necessarily enhance broader public transparency on what has been achieved or provide clear steps on how the kāwanatanga will work to respond when their targets or obligations are unfulfilled, suggesting some limitations as an accountability mechanism.[107]

MAIHI Ka Ora Indicators

The *MAIHI Ka Ora* Indicators are publicly available online and track kāwanatanga progress over the long-term, corresponding to aspects of the strategy including Māori-Crown partnerships, Māori-led local solutions, Māori housing supply, Māori housing support, Māori housing system, and Māori housing sustainability. The indicators are designed to capture broader signs of progress or shifts across the housing sector nationally, with more specific measures included where appropriate.[108] Indicators are quantifiable, for example, “the number of government housing programmes being implemented in partnership with iwi and Māori”, and "number of homes built in partnership with iwi and Māori”, but do not include specific targets for improvement. Indicators are updated annually and provide a traceable snapshot on progress, yet there are no clear steps included for addressing lack of progress on the strategy.

Health: Te Whatu Ora, Te Aka Whai Ora & Pae Ora (Healthy Futures) Act

Health inequities for Māori have long been recognised as a failure of the kāwanatanga to honour te Tiriti o Waitangi and this was highlighted in detail during the Waitangi Tribunal’s Health Services and Outcomes Inquiry (Wai 2575) inquiry and subsequent Hauora Report.[109] The report recommended an independent or ‘stand-alone’ Māori health authority to be established, alongside the revision of partnership arrangements to give effect to te Tiriti and empower tino rangatiratanga within the health system.[110] In response, the Māori Health Authority or Te Aka Whai Ora was launched in 2022 alongside the Pae Ora (Healthy Futures) Act 2022.

The National-ACT coalition agreement formed under the new government in November 2023 has outlined that Te Aka Whai Ora will be disestablished, following statements which argue that it is an ineffective and inefficient way to deliver equal health outcomes for Māori.[111] Considering the short time that Te Aka Whai Ora has been implemented and the extensive reasoning provided by the Waitangi Tribunal and a range of experts for this mechanism, this decision undermines an opportunity not only for improved Māori health outcomes but for some

[104] Menzies and Paul (2023), p. 46. Note: an Associate Minister for Housing (Māori) does not exist under the 2023-elected government. Updates on the MAIHI Ka Ora policy under the National-led coalition government were not available at the time of writing.
[105] Te Tūāpapa Kura Kāinga (2020), p. 5-6.
[106] Menzies and Paul (2023), p. 38.
[107] See: Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Design. (2022). MAIHI Ka Ora – The National Māori Housing Strategy: Implementation Plan, p. 15.
[108] Te Tūāpapa Kura Kāinga - Ministry for Housing and Urban Development. (2023). *He Oranga Kāinga, He Oranga Hapori - Housing and Urban Development Indicators*.
[109] Waitangi Tribunal (2021).
[110] Ibid, p. 178-180.
[111] New Zealand National Party and ACT New Zealand (2023), p. 8.

important aspects for kāwanatanga accountability. The extent to which these Māori health mechanisms introduced in 2022 enhanced opportunities for highlighting accountability to te Tiriti is explored below.

Pae Ora (Healthy Futures) Act 2022

The *Pae Ora (Healthy Futures) Act 2022* ('the Act') requires all strategic accountability and monitoring of health system performance to consider Māori health outcomes and underpins powers and accountability available through the new arrangement. While the entire Ministry of Health and health and disability sector are responsible for equitable health outcomes for Māori, the Act outlines specific responsibilities of the Minister for Health, Te Whatu Ora Board and Te Aka Whai Ora members intended to strengthen monitoring responsibilities at local, regional and national levels.[112]

The Minister of Health must incorporate priorities for hauora Māori into a Government Policy Statement and establish a permanent Hauora Māori Advisory Committee to advise the Minister, who must seek their advice prior to exercising certain powers. The Minister must also ensure that iwi-Māori partnership boards have a "meaningful role" in design and delivery of the health system.[113] The Minister is also required to oversee specific capabilities for Te Aka Whai Ora and Te Whatu Ora appointments are fulfilled, such as having experience and expertise in te Tiriti o Waitangi, tikanga and mātauranga Māori, and Kaupapa Māori services.

Pae Ora Act 2022 explicitly recognises the *Treaty of Waitangi Act 1975* and could be seen to bolster kāwanatanga accountability.[114] However, this intention was also evident to some extent in the previous *New Zealand Public Health and Disability Act 2000* under which significant breaches of te Tiriti took place.[115] The Act states that it provides "Māori self-determination and mana motuhake in the design, delivery and monitoring of health and disability services."[116] but does not directly enable equal Māori governance and leadership.

Te Aka Whai Ora

Te Aka Whai Ora are the commissioning body for developing and delivering te ao Māori health care, charged with ensuring that the entire health system is aware and working towards improving Māori health outcomes as a shared responsibility.[117]

Te Aka Whai Ora work with Te Whatu Ora in the design and delivery of services for Māori health and have established specific and time bound targets on priority objectives, including maternity health, chronic illnesses and mental illness.[118] Te Aka Whai Ora support the Iwi Māori Partnership Boards to carry out their work at the local level and report on their engagement with Māori hauora aspirations. They also work with MOH and TPK to effectively monitor Māori health outcomes.[119]

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[112] See: Minister of Health. (2023). *Pae Tū: Hauora Māori Strategy*; Pae Ora (Healthy Futures) Act 2022.
[113] Pae Ora (Healthy Futures) Act 2022, s. 6.
[114] Menzies and Paul (2023), p. 37.
[115] Rae, N. (2022). A critical Tiriti analysis of the Pae Ora (Healthy Futures) Bill. *New Zealand medical journal*, *135*(1551), 106-111, p. 108.
[116] Minister of Health (2023), p. 64.
[117] Te Whatu Ora. (2022). *Te Pae Tata - Interim New Zealand Health Plan*, p. 77.
[118] Ibid, p. 94.
[119] Ibid, p. 17.

Te Aka Whai Ora hold Te Whatu Ora to account for delivering and improving on Māori health outcomes, monitoring and reporting on the performance of the delivery of hauora Māori services.[120] This arrangement creates a 'feedback loop' where Te Whatu Ora are accountable to Te Aka Whai Ora via measures laid out in *Whakamaua: Māori Health Action Plan 2020–2025* (detailed below) and the delivery of hauora Māori services. and Te Aka Whai Ora report to the kāwanatanga, but the kāwantanga is not directly accountable itself. Rather Te Aka Whai Ora can be seen as an intermediate or 'relational' mechanism for kāwanatanga accountability.[121]

Whakamaua: Māori Health Action Plan & Dashboard

Whakamaua: Māori Health Action Plan 2020–2025 is an outline of the four overarching objectives the Ministry are seeking to achieve for the health system concerning Māori health outcomes and the reduction of health inequities.[122] The action plan aligns with the general service delivery and budget priorities in *Te Pae Tata: Interim New Zealand Health Plan. Whakamaua* priorities are monitored using quantitative indicators, and evaluative monitoring mechanisms. Quantitative indicators are designed to capture progress on an annual basis and are publicly online via the *Whakamaua Dashboard.*[123]

Indicators include funding received by Kaupapa Māori health and disability service providers, hospitalisations for 0–4-year-old Māori children, rangatahi Māori access to specialist mental health services, number of Kaupapa Māori research proposals receiving ethics approval that focus on Māori health and disability or the percentage of Māori in the Nursing, Medical (doctors) and Midwifery workforce over time.

Te Pae Tata and *Whakamaua increase* the level of transparency around equitable health outcomes for Māori and are specifically aimed at ensuring the health system "reinforces" te Tiriti principles and obligations.[124] However, there are no clear indications of the steps that will be taken when objectives are not met.

Environment & Planning: Regional Planning Committees & National Māori Entity

Prior to the 2023 elections, the Labour government legislated a new resource management system to replace the Resource Management Act (RMA), acknowledging that it did not provide adequate recognition of te Tiriti o Waitangi or sufficiently promote Māori participation.[125] However, as pledged in the National-ACT coalition agreement under the new government repealed both the Spatial Planning Act and the Natural and Built Environment Act before the end of 2023.[126] As with the promise to dis-establish Te Aka Whai Ora, the opportunity to practice and develop further democratic accountability within the kāwanatanga sphere is compromised by repealing these acts.

Under the Spatial Planning Act, central, regional and local governments were to work together with iwi, hapū and Māori for regional planning, while the Natural and Built Environment Act enacted specific requirements concerning Māori interests. Both pieces of legislation required that planning and environment decisions must

[120] Ibid, p. 77; 94.
[121] Rae (2022), p. 109.
[122] See: Ministry of Health. (2020). *Whakamaua: Māori Health Action Plan 2020–2025*.
[123] Ibid, p. 53; Ministry of Health, Ministry of Health. (n.d). *Whakamaua: 2020-2025 (Whakamaua Dashboard)*.
[124] Te Whatu Ora (2022), p. 12.
[125] Ministry for the Environment. (2022). *Our Future Resource Management System: Overview – Te Pūnaha Whakahaere Rauemi o Anamata: Tirowhānui*, p. 6.
[126] New Zealand National Party and ACT New Zealand (2023), p. 5.

"give effect to" rather than "take into account" the principles of te Tiriti o Waitangi[127]. The Spatial Planning Act required Regional Planning Committees would have at least two Māori members working on a high-level strategy and local basis in consultation with Māori groups or iwi.[128] Iwi and hapū were to lead the process to establish an appointment body for Regional Planning Committees, in engagement with broader Māori groups with interests in the region.[129]

Regional Planning Committees were to work with the Climate Change Adaptation Act, with the aim to uphold Te Oranga o te Taiao, a te ao Māori concept focusing on the wellbeing of the environment as entirely interconnected. This is seen to enable development while protecting the environment.[130] The Regional Planning Committees and National Māori Entity would have played accountability roles in overseeing the new system.

National Māori Entity

The National Māori Entity (the Entity) was an independent statutory body of 7 Māori members to monitor and advise how decision-making would "give effect" to the principles of te Tiriti o Waitangi.[131] The authority would have monitored decisions made by Ministers, public service agencies, local authorities and unitary authorities and regional planning committees, providing "direct input" into the development of the national planning framework and supplementing local and central government engagement with tangata whenua or mana whenua.[132]

The Entity was also responsible for regular monitoring and reporting on decisions made concerning a national planning or evaluation framework, while reporting to the Minister for the Environment on how the national status of the environment and resourcing is "giving effect" to the principles of te Tiriti o Waitangi every six years.[133]

While this section has demonstrated some progress on the kāwanatanga developing processes to hold itself accountable in several different domains, these processes are always at risk. As we have highlighted, some of these have already been pledged for repeal or abolition under the New Zealand National Party, New Zealand First and ACT New Zealand Coalition Agreements. The perpetual risk of undoing such progress is because these mechanisms have been determined and designed within the kāwanatanga and resourced by the kāwanatanga. The considerable amount of power centralised in the Executive, subject to 3 year political terms and trends, adds to this risk. Because of this, we think it is important to ensure there are constitutional protections for te Tiriti. This requires thinking beyond the central government sphere and additionally examine distributed, local and regional processes.

[127] Spatial Planning Act 2023, s. 5; Natural and Built Environment Act 2023, s.5.
[128] Ministry for the Environment (2022), p. 29.
[129] Ibid, p. 45-46.
[130] See, for example: Ministry for the Environment. (2023) *Planning and consenting in the new system*.
[131] Natural and Built Environment Act 2023, s. 67.
[132] Ministry for the Environment, (2022), p. 50-51.
[133] Natural and Built Environment Act 2023, s. 70.

Local & regional accountability

In this section we explore existing mechanisms that are distributed, localised or regionalised. This is because rangatiratanga is distributed, localised and regionalised, and there are important and constructive relationships of accountability at these levels.

National Iwi Chairs Forum & the Aotearoa Independent Monitoring Mechanism

The National Iwi Chairs Forum (NICF) are a group of leaders from hapū and iwi representing over sixty collective iwi interests from across the country. NICF meets quarterly with various specialist working groups to present work and research. While operating at a national level and representing iwi groups at a collective level, the rangatiratanga or independence of iwi is explicitly acknowledged.[134] NICF have rejected endeavours to bring the forum under kāwanatanga control, and instead persist in maintaining responsibility at the marae, whānau and hapū level.[135] In this way, NICF can be seen to reflect tikanga Māori principles of accountability operating within the rangatiratanga sphere.[136]

Iwi Leader Groups

NICF have established a range of Iwi Leader Groups working on specific issues, such as constitutional transformation and the climate crisis. These groups often take on advisory roles to the kāwanatanga concerning policy and legislation, for example advising on the Ministry for the Environment's internal water allocation policy and work with the Land and Water Forum. In matters of justice, the NICF have worked with the kāwanatanga according to a specific independent engagement framework, to ensure more effective youth justice processes and a family group conference system for rangatahi as envisaged by iwi Māori.[137] The Mātauranga Iwi Leaders Group (part of NICF) engaged in a two year partnership with the Ministry of Education to progress iwi Māori aims in education and learning.[138] These examples of engagement provide the NICF with potential avenues to deepen accountability from the kāwanatanga to iwi Māori.

Aotearoa Independent Monitoring Mechanism

The NICF also operate the Aotearoa Independent Monitoring Mechanism ('the Monitoring Mechanism') who report on how the kāwanatanga is progressing on implementing UNDRIP. The Monitoring Mechanism's current priority is work towards constitutional transformation and several members are from the Matike Mai Aotearoa working group. Other priorities identified include self-determination, enabled by participation in decision-making and free, prior and informed consent, lands, and work on resources, equality, and non-discrimination.[139]

The Monitoring Mechanism report annually on progress and current matters of concern for Māori. They work with the Human Rights Commission, hapū and iwi to gather information and data from various national sources

[134] National Iwi Chairs Forum. (n.d). *Sharing The Vision of Kotahitanga*. Iwi Chairs Forum Secretariat.
[135] Mutu, M. (2016). Māori Issues. *The Contemporary Pacific*, *28*(1), 227-237.
[136] Menzies and Paul (2023), p. 25.
[137] Henwood, C., George, J., Cram, F., & Waititi, H. (2018). *Rangatahi Māori and Youth Justice Oranga Rangatahi*.
[138] Education Gazette. (2022). Relationship with iwi leaders supports better outcomes for ākonga Māori. *Education Gazette*, *101*(14), 40-44.
[139] Mutu (2019).

including policy documents, reports, legal cases. The reports are shared with the United Nations Expert Mechanism on the Rights of Indigenous Peoples and are published on their website.[140] The Monitoring Mechanism have demonstrated that even in instances where the kāwanatanga have stated they are implementing UNDRIP articles, there is insufficient evidence to confirm this, alongside very low compliance rates over specific periods.[141] While there are no legal or material sanctions imposed through this reporting, recording compliance and progress alongside the UN establishes transparency concerning UNDRIP and te Tiriti compliance. This could amount to significant pressure on the kāwanatanga towards addressing priorities recommended by the Monitoring Mechanism and the Office of the High Commissioner for Human Rights, and to meeting obligations as signatories to UNDRIP.

Independent Māori Statutory Board (IMSB) & Auckland Council

Introduced under the *Local Government (Auckland Council) Act 2009*, the IMSB provide direction and guidance to the Auckland Council ('the Council') to improve responsiveness to Māori and issues affecting Māori. The IMSB comprises seven mana whenua and two mātaawaka (urban Māori who are not mana whenua) representatives appointed by mana whenua representatives every three years. Two IMSB members sit on the Council and one to two on Council committees. Independent from both the Council and iwi, and exempt from accepting direction from any groups or persons, the IMSB can be seen as a relational accountability mechanism for mana whenua groups, and mātaawaka of Tamaki Makaurau and Auckland Council.

Local Government (Auckland Council) Act 2009 & Local Government Act 2002

Under the *Local Government (Auckland Council) Act* ('the Act') IMSB assist Council decision-making by advancing issues of importance around cultural, economic, environmental and social policy for mana whenua groups and mātaawaka of Tāmaki Makaurau. They appoint members to sit on Council committees concerning management and stewardship of natural and physical resources and may also establish committees.

As a local statutory body, the IMSB also provides annual reports to Auckland Council, summarising the board's activities. The *Local Government Act* requires local councils to ensure Māori are included in decision-making and that Māori have the "capacity to contribute".[142] Councils must also 'take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga' regarding significant decisions concerning land and water.[143] These aspects of the Act may be considered ways to enhance kāwanatanga accountability to Māori and mana whenua at the local level.

Te Tiriti o Waitangi Audits

While all local councils are required to operate with regard to the principles of the Treaty of Waitangi, the IMSB also carry out a te Tiriti o Waitangi Audit on the Council every three years. This may act as a more concrete or specific mechanism for transparency and accountability to te Tiriti o Waitangi at the local level. The auditing

[140] United Nations. (2019). *The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) - Advisory Note*.
[141] Mutu (2019); For example, see: United Nations Committee on Economic, (UNCESCR). (2018). *Concluding Observations on the Fourth Periodic Report of New Zealand*.
[142] Local Government Act 2002, s. 81.
[143] Ibid, s. 77.

agenda and scope is set by the IMSB and examines how processes and structures in place demonstrate the Council is acting in accordance with its Treaty of Waitangi obligations.

The 2021 audit included observations around the extent to which mana whenua were able to participate in decision-making, how Māori can contribute to decision-making and the organisational leadership and frameworks in place to ensure outcomes respond adequately to Māori.[144] The audits also consider Māori legislative rights, Treaty Settlements, Memorandums of Understandings and Service Agreements. This means the process may clarify if and how the Council is maintaining a "true and authentic partnership with Māori".[145]

Te Tiriti o Waitangi Audits highlight the significant role processes like these could play in measuring and holding the kāwanatanga to account if used more broadly.[146] Such a process has been recommended by others as a way to strengthen Treaty relationships concerning national resource management.[147] In Auckland Council's case, the IMSB have been able to highlight shortcomings around guidance for Council groups and organisations to foster engagement with iwi as well as the need for increased tracking and monitoring around strategic plans such as the Māori Responsiveness Plan.[148] The audits create an ongoing feedback loop for further scrutiny from the IMSB, while their public availability provide transparency for mana whenua or iwi groups to measure Council accountability over time.

Te Tatau o Te Arawa (Te Arawa Partnership Board) & Rotorua District Council

The Te Arawa Partnership Board ('the Board') represent the 'collective interests' of Te Arawa (including Te Pūkenga Koeke o Te Arawa, Te Arawa Marae, Te Arawa hapū and Iwi; Pan-Te Arawa entities; Maori Land Trusts and Incorporations and Matawaka groups, and individual members of Te Arawa) in local government decision-making. The model was adopted in 2015 and guarantees Te Arawa board members on the Strategy, Policy & Finance and Operations & Monitoring committees and other strategic working groups.[149] One of the key objectives of the model is to contribute to a commitment on behalf of the Rotorua Lakes Council to partner with Te Arawa. Te Arawa Board representatives are nominated and appointed to Council committees by Te Arawa iwi members. While this model does not ensure veto or final decision-making powers, it contributes to creating a system honouring Treaty relationships and self-determination at a local level.[150] The nomination process which enables Te Arawa members from all over the country and overseas to participate, provides a level of transparency and broad participation.

Te Matapihi He Tirohanga Mo Te Iwi Trust

Te Matapihi He Tirohanga Mo Te Iwi Trust ('Te Matapihi') are an independent national peak body for the Māori housing sector. As a Kaupapa Māori organization, run and led by Māori, Te Matapihi champion Māori housing outcomes, contribute to Māori housing development with both central and local government and assist with

[144] Independent Māori Statutory Board. (2021). *He Waka Kōtuia - Te Tiriti o Waitangi Audit 2021*.
[145] Independent Māori Statutory Board (2021), p. 9.
[146] Menzies and Paul (2023).
[147] Bargh, M., & Tapsell, E. (2021). For a Tika Transition Strengthen Rangatiratanga. *Policy Quarterly*, *17*(3).
[148] Independent Māori Statutory Board (2021), p. 9.
[149] See*:* Rotorua Lakes Council. (2015). *Manatu Whakaaetanga - Partnership Agreement*.

[150] Bargh, M. (2021). Challenges on the path to Treaty-based Local Government relationships. Kōtuitui: New Zealand Journal of Social Sciences Online, 16(1), 70-85.

collaboration and resource-sharing to expand the Māori housing sector. Te Matapihi work alongside government agencies including HUD and TPK, as well as Community Housing Aotearoa (the peak New Zealand community housing sector body).

These functions and the independent advocacy that Te Matapihi bring to the Māori housing sector, and the expectation that Te Matapihi members and staff reflect Māori principles and values in their work, underscores responsibility to the Māori housing sector and communities within the rangatiratanga sphere.[151] In recent reports, Te Matapihi have highlighted significant issues in Māori housing after the Covid-19 pandemic as a 'continuum' and part of systemic failure, recommending broader collaboration with Māori housing providers and a National Māori housing plan that would commit to significant investment and improvement in Māori housing.[152] While reports and advocacy do not automatically demand accountability from the kāwanatanga, operating in the rangatiratanga sphere while in close proximity to peak organisations and core kāwanatanga agencies, Te Matapihi ensure that te ao Māori perspectives and priorities are represented in housing sector decision-making.[153]

Part 3 has covered existing fiscal accountability processes that could incorporate te Tiriti, existing accountability mechanisms in other domains that could be useful for thinking about fiscal accountability, and local or regional processes that could inform central/fiscal processes. None of these are silver bullets, but thinking though all of them, and their strengths and weaknesses, can help inform possibilities. This section has brought forth some key insights concerning such strengths and weaknesses. These include the incompatibility of centralised public budgeting secrecy with te Tiriti, Waitangi Tribunal kaupapa inquiries, the capabilities of te Tiriti o Waitangi audits, the independence of the NICF and the possibilities (though fragile) of Te Aka Whai Ora the Māori health authority.

Part Four: International models

It is important to look beyond our own context for inspiration. Though it would be inappropriate to copy and paste processes from very different contexts, there may be particular processes worth exploring as possibilities. We focus first on settler-colonies, and then look to how accountability manifests in wellbeing frameworks.

Indigenous accountability in other jurisdictions

Northern Territory Local Decision-Making (LDM) Agreements in Australia

The Northern Territory (NT) government Local Decision Making policy is designed to progressively transfer control to Aboriginal Peak Organisations or local Indigenous entities over key service delivery areas over 10 years. The policy has led to several LDM agreements in Ngukurr, Alice Springs Town Camps, Jawoyn Region, the Groote Archipelago and Kalkaringi.[154]

[151] Menzies and Paul (2023), p. 25.
[152] Holloway, C. (2021). *Māori housing crisis - Can Covid-19 bring solutions?*
[153] Menzies and Paul (2023), p. 25.
[154] Anindilyakwa Land Council, & NT Government. (2019). *Groote Archipelago Local Decision Making Agreement - Scheduled 3.2 Economic Development Implementation Plan*, p. 2.

The Anindilyakwa Land Council (ALC) are the peak representative body of the 14 clans of the Groote archipelago and entered into an LDM agreement in 2018. The ALC have a series of LDM Agreements in housing, economic development, law, justice and rehabilitation, education, health services and local government with the NT government. The agreements require the NT government and the ALC to work together to achieve local service delivery under a set of governing principles including self-determination; flexible place-based approaches; co-design; and community control. The ALC is responsible for involving and consulting with all relevant organisations during the implementation of LDM and is subject to general performance auditing by an Audit Committee.[155]

Monitoring & Evaluation of LDM Agreements

Accountability to the LDM Agreement is established through a framework which accounts for the 10-year transition period, requiring quarterly meetings between the NT Government and ALC representatives seeking consensus around joint objectives.[156] Specific goals and priority objectives are outlined via Implementation Plan Meetings arranged by the NT Government. Monitoring reports track the progress made on these, which are referenced in annual reports and made available on the websites of the Department of the Chief Minister and the ALC.[157] This takes the form of outlining the key achievements made under each LDM area by each of the parties.[158]

Accountability for both the NT government and the ALC to the LDM is envisioned as a "two-way checking in" process. However, feedback and advisory mechanisms are led by the government rather than the peak body.[159] There are also no set requirements around what is required in terms of prioritisation progress, ostensibly due to the local focus on each LDM plan. Milestones (timeframes) for implementation are agreed upon jointly but there are no prescriptive performance or time-bound measures imposed under an LDM.

Evaluation reports take the form of accountability for implementation of the policy and agreements, rather than the progress of the LDM milestones themselves. The ACL & NT Government's LDM requires independent evaluation after 3 years of implementation, which must have "strong focus" on Anindilyakwa people's perspectives, be jointly funded and made publicly available.[160] The first ALC evaluation is a thematic analysis based on semi-structured interviews with various on the ground representatives or managers from ALC and other Anindilyakwa bodies speaking to their experience of implementation.[161] This emphasis on including lived-experience perspectives in the evaluation highlights that Anindilyakwa people's voices have been taken into account, but it does not provide insight into specific progress on the milestones or objectives towards autonomy.

Government of Canada and First Nations Peoples Fiscal Relations

Following the Indian Residential Schools Settlement Agreement (2007) and Truth and Reconciliation Commission's Calls to Action (2015), alongside decades of First Nations activism and work, the Canadian

[155] Anindilyakwa Land Council & NT Government. (2018). *Groote Archipelago Local Decision Making Agreement,* p. 5.
[156] Ibid, p. 14.
[157] Ibid, p. 14-15.
[158] Anindilyakwa Land Council. (2022). *Anindilyakwa Land Council Annual Report 2021-2022*, p. 6-9; Department of the Chief Minister and Cabinet. (2022). *Annual Report 2022*.
[159] Office of Aboriginal Affairs. (2018). *Local Decision Making Framework Policy*, p. 18.
[160] Anindilyakwa Land Council & NT Government (2018), p. 15.
[161] Spencer, M., Christie, M., & Boyle, A. (2022). Northern Territory Government Local Decision Making: Ground Up Monitoring and Evaluation: Final Report–August 2022, p. 60-63.

government committed to advancing reconciliation and building a 'new relationship' with the Indigenous peoples of present-day Canada in 2016.[162] This later extended to a 'new fiscal relationship' under a 'Recognition and Implementation of Indigenous Rights Framework' (the 'Implementation Framework') in 2018. The Framework aims at establishing legislation and institutional capacities that would ensure Indigenous Peoples can move beyond the legal and regulatory barriers to self-determination previously enacted, particularly concerning fiscal authority and land management.[163]

The Implementation Framework is guided by a set of relationship principles, which act as "a starting point to support efforts to end the denial of Indigenous rights that led to disempowerment and assimilationist policies and practices".[164] They include the aspiration towards 'cooperative federalism' and obligation "to aim to undertake" free, prior, and informed consent.[165] These demonstrate possible mechanisms for accountability for the Truth and Reconciliation Commission's Calls to Action and the Implementation Framework on behalf of the Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC).

Nation-to-Nation MOUs & Bi-lateral Mechanisms

A set of permanent bi-lateral mechanisms, delivered via a forum and underpinned by 'Nation-to-Nation' MOUs, have been established between the Canadian government and the Assembly of First Nations, Inuit Tapiriit Kanatami and Métis National Council peak Indigenous representative bodies. They are permanent mechanisms, envisioned as an ongoing and regular commitment to dialogue. These mechanisms progress steps towards self-government for Indigenous groups through the establishment of jointly agreed priorities and the 'co-development' of policies.[166] They are also intended to ensure progress is tracked and reported publicly as agreements or policies are implemented. Progress is measured by the number of completed objectives stated under the Truth and Reconciliation Commission's Calls to Action and the Implementation Framework. The completion of objectives is monitored through the bi-lateral mechanisms and tracked primarily by the CIRNAC departmental 'Results Framework'.

The bi-lateral mechanisms have resulted in several legislative changes and policies so far. However, the extent to which legislative decisions have represented the broad and diverse views of different First Nations, treaty organisations or Indigenous nations groups has been compromised by the structure of the mechanisms and the balance of power. King and Pasternak have pointed out the primacy of the Canadian constitutional framework underpinning legislative changes subordinates' Indigenous peoples' rights and powers into the Canadian law.[167] These authors also note one symptom of the Assembly of First Nations (AFN) and Crown's bi-lateral agreement is that it may in practice entail decision-making by the AFN Chief where they have not been empowered or delegated by other First Nations or Indigenous groups to do so.[168]

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[162] See: Government of Canada. (2016). *Statement by the Prime Minister of Canada on advancing reconciliation with Indigenous Peoples*.
[163] Government of Canada. (2018a). *Overview of a Recognition and Implementation of Indigenous Rights Framework (archived)*.
[164] Government of Canada. (2018b). *Principles respecting the Government of Canada's relationship with Indigenous peoples*.
[165] Ibid.
[166] Government of Canada. (2023). *New permanent bilateral mechanisms.*
[167] King, H., & Pasternak, S. (2018). *Canada's emerging Indigenous rights framework: A critical analysis*. Yellowhead Institute: Toronto, p. 8.
[168] Ibid, p. 9.

CIRNAC Results Framework

'Departmental Results Reports' set out annual targets and measures for work supporting bi-lateral agreements progressed by CIRNAC at the department level. Reported 'results' or outcomes are specific, measurable and most are assigned an annual numerical target tracking how bi-lateral mechanisms are being carried out. Measures include, "percentage of First Nations that have opted into an Indian Act alternative", "percentage of First Nations that assert jurisdiction over fiscal management" and, separately, "over land management", to implement a certain level of the Truth and Reconciliation Commission Calls to Action or fiscal or taxation laws in a given year.[169]

The results and targets are available along with all Canadian government departments online, designed for general performance and budget accountability, rather specific to the aims of the bi-lateral mechanisms and Indigenous peoples.[170]. A dashboard summary of the targets and quantity met or unmet provides some transparency and highlights the overall progress. The 'results' are presented alongside an explanation of the methods used to arrive at this, although not greatly detailed. The previous and forthcoming years targets are documented alongside each of the 'results', although there is no explanation provided on the dashboard around why a target has been adjusted.

Although CIRNAC work 'in collaboration' with Indigenous and First Nations groups to plan departmental results, both the overarching objectives and the targets are ultimately determined by the government. This has resulted, for example, in the 'Percentage of Truth and Reconciliation Commission Calls to Action that are implemented' indicator to be measured by the number of Actions "committed to" rather than those completely implemented. In 2022, CIRNAC reports that 76 of 94 Calls to Action (or 80%) have been "met" under this indicator, when others report only 13 of the 94 Actions have been implemented in the seven years after the Truth and Reconciliation Commission.[171]

First Nations Tax Commission

The First Nations Tax Commission (FNTC) is a shared governance institution that approves the property tax laws set by Indigenous self-governments.[172] Comprised of majority federal government-selected members, the FNTC "regulates, supports and advances First Nation Taxation".[173] While this body educates and assists First Nations in instating a tax system, the FNTC also oversees the integrity of the system and the reconciliation of taxpayer interests to the leaders of the Nations.[174] This regulation shows a lack of confidence in the First Nations' ability to administer a fair and equitable tax system. Requiring approval from an external body sustains control over Nations' ability to exercise tax, restricting self-determination.[175] In 2023 the First Nations Fiscal Management Act was amended to expand the mandates of the FNTC to 'better support First Nations' to establish local revenue

[169] Crown-Indigenous Relations and Northern Affairs Canada. (2023). *Crown-Indigenous Relations and Northern Affairs Canada: 2023-24 Departmental Plan*.
[170] See: Government of Canada. (2022). *GC InfoBase Results: Crown-Indigenous Relations and Northern Affairs Canada*.
[171] Jewell, E., Mosby, I., & King, H. (2022). *Calls to Action Accountability: A 2022 Status Update on Reconciliation*, p. 6.
[172] First Nations Tax Commission. (n.d.). *Welcome to the FNTC/ Homepage*; Heyes, A. and Scobie, M. (2023). *Possibilities for resourcing rangatiratanga*.
[173]First Nations Tax Commission. (n.d.).
[174] First Nations Tax Commission. (n.d.). *First Nations Tax Commission: Overview*.
[175] Boissonneault, A. (2021). Policy Forum: A critical analysis of property taxation under the First Nations fiscal management act as a self-government tool. *Canadian Tax Journal*, *69*(3), 799–812.

laws and support local revenue service agreements. The amendment also expanded the powers of First Nations to enforce compliance with local revenue laws and enables them to make laws, regulate, prohibit or impose requirements around services on reserve land.[176]

Part Five: Proposed mechanisms in Aotearoa New Zealand

Proposed mechanisms paint pictures of possibility based on a balance of on the ground conditions, and future aspirations. In this section we look to the models that have been put forward to advance accountability in New Zealand across different domains: Māori housing, social assistance and tax policy. These have all been advanced by experts in those fields, all of whom take public accountability for te Tiriti seriously.

Māori Housing

Menzies and Paul (2023) propose a set of alternative models for more meaningful accountability from the kāwanatanga for Māori housing. Exploring concepts of te ao Māori accountability and other comprehensive mechanisms, they put forward three options: a kāwanatanga appointed entity reporting to the Kāwana; an independent entity or Kāhui working with a National Māori Housing Sector Body and advising the Kāwana; a 'relational' joint body enabling mutual accountability between the independent body and the Kāwana.[177] The models are considered on the basis of rangatiratanga, enhanced te Tiriti relationships, consolidation or centralisation of sector skills, integration of delivery across the Kāwana and Māori housing providers and the autonomy of the authority to minimise bureaucratic obstacles among other factors. This approach is in line with Matike Mai.

Kāhui or Independent Housing Authority

The kāhui model is appointed independent of the kāwana and works with the National Māori Housing Sector Body, while reporting to the kāwana. The Kāhui model establishes a rangatiratanga sphere for housing, with Māori oversight and decision-making powers. This enables strategic work towards solutions responding specifically to issues affecting Māori housing, aligning development of sector skills with these issues and culturally appropriate outcomes.[178]

Māori Housing Authority (Kāwana appointed)

This model is similar to the health sector arrangement with Te Aka Whai Ora. The Māori Housing Authority would work with regional iwi, hapū and the Māori housing sector to oversee and audit all Māori housing services and provisions. The Authority would sit within the rangatiratanga sphere with decisions and strategy made by Māori, reporting directly to parliament. Using statutory protections to assist in maintaining independence from the kāwana, this model holds space for development and capacity building for Māori led housing policy.[179]

[176] Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). (2023). *New amendments to the First Nations Fiscal Management Act receive Royal Assent*.
[177] Menzies and Paul (2023), p. 52.
[178] Ibid, p, 55.
[179] Ibid, p, 53-54.

Joint Body & te Tiriti Audits

A joint body creates a mutually accountable entity within a 'relational' sphere between the kāwanatanga and the Māori housing sector held accountable by statutorily giving effect to te Tiriti o Waitangi. This model brings together representatives from across te Tiriti partners, providing opportunities to develop kāwana-Māori relations. This model may lack the perceived level of transparency available through the other models and involves increased bureaucratic administration to ensure accountability.[180]

Māori Data Governance Model (MDGov)

Indigenous data sovereignty is a global movement led by the recognition of Indigenous data as a valued cultural resource, centring the self-determination, collective data rights and intergenerational well-being of Indigenous peoples for good data governance.[181] Māori data sovereignty asserts the right for Māori to govern their own data while supporting tribal sovereignty, and Māori and iwi goals.[182]

A Mana Ōrite agreement between the NICF's Data Iwi Leaders Group (ILG) and Statistics New Zealand (Stats NZ) requires ongoing reciprocal recognition, support and validity of the world views, knowledge and perspectives of each party.[183] The parties meet twice a year to discuss collaborative approaches and review their work programme and has resulted in the proposed Māori Data Governance Model (MDGov). MDGov was co-designed between iwi and national Māori leaders, representatives of Māori organisations with data interests, individual Māori data experts, and senior representatives of 16 public service agencies.[184] The model aims to ensure Māori benefit from government data collection and use, while establishing a safer data system to avoid biased and unethical use of Māori data.[185] The model is based on eight pou (roughly, 'pillars') and introduces three mechanisms for accountability supported by accompanying legislative and policy changes.

Chief Māori Data Steward (CMDS)

The role of the CMDS is to support the implementation of MDGov across all of government, mirroring the role of the current Chief Data Steward (CDS). The CMDS sets the strategic direction for all government data management and for responding to data issues, overseeing the 'Data Stewardship Framework' and establishing data management *standards* for agencies.[186] Establishing a Mana Motuhake data system, the CMDS oversees over all digital governance authority to avoid having departmental level monitoring, holding agencies to account for breaches and the misuse of data via a monitoring framework. The CMDS sets the guidance for direction of investment for the Model, ensuring it is adequately resourced.

[180] Ibid, p, 56.
[181] Kukutai, T., Campbell-Kamariera, K., Mead, A., Mikaere, K., Moses, C., Whitehead, J., Cormack, D. (2023). *Māori data governance model*, p. 5.
[182] Te Mana Raraunga. (2016). *Māori Data Sovereignty Network Charter*.
[183] Statistics New Zealand. (2019). *Mana Ōrite Relationship Agreement*.
[184] Kukutai et al. (2023), p. 4.
[185] Ibid, p. 5.
[186] Ibid, p. 18.

Independent Statutory Entity or Independent Crown Entity

The Independent Statutory Entity or Independent Crown Entity are supplementary to the CMDS to ensure adequate oversight of data across the kāwanatanga. As an independent entity designed for kāwanatanga accountability, the governance arrangement prioritises accountabilities and connections to te ao Māori, with the structure, form and nature of accountabilities reflecting tikanga Māori.[187]

Māori Data Classification Framework & Māori Data Standards

The classification framework outlines which data is Māori data and the significance or sensitivity of specific data according to te ao Māori.[188] The Māori data standards are to ensure reliable results and avoidance of biases when monitoring of Māori wellbeing and population trends for policy, developed in partnership with the CMDS and following tikanga Māori principles. The CMDS would issue guidance to all kāwanatanga departments in line with these, under provisions incorporated into the Public Service Act 2020.[189]

Macro-Accountability for Social Assistance

The New Zealand Institute of Economic Research (NZIER) have put forward an overview of mechanisms designed to ensure democratic accountability and learning are enacted in the social assistance system and consider the implications for te ao Māori accountability within this. The framework centres a 'learning focus' for accountability, seeking ongoing improvement by prioritising the voices and perspectives of those receiving social assistance as the benchmark to which the system is both serving and accountable to.[190]

Macro-level Accountability Framework

Employing an adequately resourced research body for ongoing consultation and implementation, the macro-level framework links the delivery of social assistance directly to the needs and perspectives of those seeking social services and provisions.[191] The framework requires a specialist department and dedicated Minister who reports on actions they and their department are undertaking to improve delivery, similar to requirements under the Pae Ora Act for the health sector, as well as an externally developed reporting framework and independent monitoring for agencies.[192]

The framework is based on the capability approach where the effectiveness and efficiency of the social assistance system is measured by the extent to which people lead the "lives they value and have reason to value"[193]. The authors acknowledge that a capability approach is not designed for Indigenous peoples and the debates around the appropriateness of incorporating a framework which can centre individualistic worldviews onto policy concerning Māori. The NZIER framework nevertheless highlights some important characteristics for mechanisms that would hold actors and institutions within the social assistance system to account for preventing people from "living the lives they value" and addressing power imbalances for those facing persistent disadvantage.

[187] Ibid, p. 19.
[188] Ibid, p. 51.
[189] Ibid, p. 19.
[190] NZIER (2023), p. 7.
[191] Ibid, p. 101.
[192] Ibid, p. 111; 102.
[193] Ibid, p. 3; Sen (1984).

Tax Policy Reviews

As discussed in section one, the tax policy process lacks many desirable accountability mechanisms. The GTPP has been established for decades but is not always followed, including at the consultation stages which may be biased or exclusionary.[194] Sawyer documents various past proposals and currently existing models for the independent oversight of tax policy and outlines a proposal for a permanent independent body to oversee tax reviews in New Zealand.[195]

The New Zealand Independent Tax Review Commission

The New Zealand Independent Tax Review Commission (NZTRC) is proposed by taxation scholar Sawyer as a 'quasi-autonomous' body, separate from public service departments involved in taxation, who would maintain a permanent role overseeing tax policy reform.[196] Governed by its own board, performance and terms of reference for the NZTRC are set by the Minister of Revenue, while operating at 'arms-length' to the kāwanatanga under the same legislation as existing 'independent' Crown entities.

Supported by Inland Revenue, and the Treasury where needed, the NZTRC would undertake regular 10-year reviews of the entire tax system while working on specific tax policies with a holistic or broad-view approach, as required.

They would oversee the consultation process and provide a dedicated online platform for public transparency and accessibility to all consultation processes and outcomes. While the Director would be appointed by Parliament under the recommendation of the Minister and reports would be submitted to Parliament via the Minister, the NZTRC would be accountable to Parliament directly through the select committee process. This structure is like that of the National Audit Office in the United Kingdom; the aim is to separate the body from kāwanatanga departments and promote the independence of its oversight.[197]

It was important for us to include both what does happen in particular contexts, as well as normative processes for what *could* happen in particular contexts. In this section we explored different proposals that do or could take te Tiriti seriously in constitutional/democratic accountability. Particular insights from this section include a potential combination of ideas from the Kāhui or independent Māori housing authority, a Chief Māori Data Steward, and an Independent Tax Review Commission all geared towards fiscal accountability for te Tiriti.

Part Six: Fiscal accountability for te Tiriti o Waitangi

Summary

This report set out to examine the ways that the Crown can hold itself to account for te Tiriti. We did so deliberately, because too often the expectation is put on Māori to hold the Crown accountable. And this can be resource intensive. However, during preparation of the report, it became clear that we need to continue building

[194] Marriott (2021); Sawyer (2020).
[195] Sawyer (2020).
[196] Ibid, p. 112.
[197] Ibid, p. 108.

capacity in society to protect and advance constitutional transformation, and capacity in the rangatiratanga sphere to hold the kāwanatanga to account. Progress made in the kāwanatanga can be rolled back easily. We need the Kāwanatanga to be accountable, we need capacity in rangatiratanga to be accountable, but more importantly to hold the kāwanatanga to account, and we need enduring processes between them for a relational/learning accountability to progress in a way that gives effect to te Tiriti.

Accountability is shaped by power, and the kāwanatanga has asserted its power to assume exclusive right to revenue raising. This has diminished the power of the rangatiratanga sphere, and its capacity to hold its te Tiriti partner to account. While the executive within the kāwanatanga has significant amounts of centralised power, technically dependent on the electoral system and will of voting citizenry, the rangatiratanga sphere derives its power from mana and rangatiratanga, relationships with land and one another. The short-term view of the kāwanatanga can be a significant challenge for accountability, but the long-term view of the rangatiratanga sphere is a source of power. We can see this power manifesting today as struggles move out of the formal relational sphere that has been dictated by the kāwanatanga, back onto the land to demand accountability.

It is within this context that we make the following draft recommendations for discussion derived from our review. These are not silver bullets, but we believe that there are some useful lessons for accountability and fiscal authority in line with te Tiriti from a number of different regions and domains.

Recommendations for discussion

Our recommendations are drawn from the various Māori and non-Māori aspects of accountability outlined at the beginning of this report. Recommendations derived from kāwanatanga democratic accountability are relatively consistent with existing mechanisms of accountability discussed in this report but include specific features we believe would ensure greater accountability by drawing on te Tiriti more explicitly or including mechanisms which assist in reinforcing te Tiriti. Relational or learning accountability are mechanisms which emphasise partnership and reciprocity and how to honour te Tiriti and governance agreements as ongoing. This involves mechanisms designed to highlight where accountability is absent, while demonstrating where the kāwanatanga could realign policy and practices to honour te Tiriti. Rangatiratanga accountability are mechanisms grounded in tikanga and autonomous Māori authority, concentrating resources so as to ensure kāwanatanga accountability is highlighted and maintained ongoing, while ultimately generating greater capacity for Māori fiscal authority. Combined, the recommendations seek to overcome contradictions imposed by settler colonialism and maintained by the kāwanatanga in the fiscal space.

Kāwanatanga or Democratic Accountability

Māori Tax Commissioner

The report has highlighted some options for independent Māori authority for tax policy and governance within the kāwanatanga sphere which may assist in upholding democratic accountability. The Chief Māori Data Steward put forward by Kukutai et al. looks to tikanga, te ao Māori and mātauranga Māori as a way to enhance accountability to te Tiriti o Waitangi and to improve a range of outcomes for Māori.[198] Kukutai et al. work with the aim to establish a Mana Motuhake data system and a similar path should be forged in taxation. Developing

[198] Kukutai et al. (2023).

a similar role in tax policy, such as a Māori Tax Commissioner, would assist in setting strategic direction and enforcing te Tiriti rights for taxation, while working to improve analysis and standards (including frameworks like He Ara Waiora) for equitable tax policy alongside Māori communities.

Like the CMDS, the Commissioner would provide a robust mechanism for accountability and an opportunity to identify and develop pathways towards taxation in the rangatiratanga sphere, working to monitor and guide Inland Revenue and the Treasury, while enacting powers to establish frameworks for te Tiriti accountability throughout the development of tax policy and practices.

As Sawyer suggests, an Independent Tax Review Commission would establish a level of independent and permanent, ongoing review and monitoring to improve the tax system for the many diverse communities of New Zealand. The Commissioner could hold a role within such an autonomous body for the purposes of overseeing tax policy alignment to te Tiriti and establishing and maintaining equity in the tax system for Māori.

Te Tiriti o Waitangi Audits

Te Tiriti o Waitangi Audits practiced by the IMSB provide a method for regular examination of how policy and practices are upholding te Tiriti. Over time they have established a feedback loop which prompts and requires responses from Council, maintaining transparency and reinforcing accountability to te Tiriti at a local level. Similar audits have been put forward by Menzies and Paul for housing and Bargh and Tapsell for local level accountability around environment and resourcing.[199] The Office of the Auditor General and the Māori Tax Commissioner may both play a role in overseeing te Tiriti audits and should be supported by legislation empowering them to enforce standards and changes to uphold te Tiriti where necessary.

Relational Accountability

Waitangi Tribunal Kaupapa Inquiry into Fiscal Authority

We think there are grounds for a kaupapa inquiry with the Waitangi Tribunal into fiscal authority, or for including these issues in an existing or potential inquiry. The Crown gradually assumed an exclusive right to taxation, despite Māori engaging in taxation and tax-like practices, and in breach of Article 2 of te Tiriti. As discussed, there is evidence to suggest that not only have Māori been denied the right to maintain fiscal autonomy but that there is inadequate consultation and inclusion of various Māori groups and communities taking place during tax policy development. A kaupapa inquiry would ensure a comprehensive review and consideration of historical breaches and the impact they have had on Māori and lay the grounds for changes fiscal governance in the rangatiratanga sphere and for shifting practices in tax policy in the relational or kāwanatanga spheres.

Rangatiratanga Accountability

Independent Māori Tax Authority

An independent authority, like the Kāhui or Independent Housing Authority model outlined by Menzies and Paul, demonstrates clear benefits for ensuring Māori authority by acting outside of the kāwanatanga and drawing on Māori skills, worldviews and resources. This model is beneficial for capacity-building for Māori housing outcomes

[199] Menzies and Paul (2023).

while developing a strong mechanism to highlight the shortcomings of the kāwanatanga in this space, and presents clear benefits for accountability in taxation and tax policy.[200] Although this kind of mechanism requires the building up of resources, doing so should be viewed as part of a long term strategy to support the development of taxation in the rangatiratanga sphere or to improving tax policy alignment with te Tiriti, bolstered by the kaupapa inquiry.

Maintaining NICF independence and enhancing capacity for monitoring

Mutu pointed out that the NICF have rejected attempts to bring the forum under kāwanatanga control, with an insistence that responsibility is maintained at marae, whānau and hapū level. This retains elements of accountability within tikanga. It also maintains an authority within the rangatiratanga sphere that needs to retain complete independence from the kāwanatanga. The Monitoring Mechanism has the potential to put pressure on the kāwanatanga for fiscal commitments to (or against) te Tiriti. Building capacity for demanding accountability is more essential than ever, but this requires resourcing and resourcing is structurally constrained. The rising economic power of Māori, including post settlement governance entities represents one source of resourcing this capacity. Although this is structurally constrained, it represents potential capacity in the interim of other sources of resourcing. We recommend additional investigation of how other Indigenous Peoples resource their self-determination, and build capacity for demanding accountability. Exploration should go beyond what has been written, to experiences on the ground. Because many of these lived-experiences do not make it into the formally reported versions of events. These can inform our own possibilities.

[200] Menzies and Paul (2023), p. 52.

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