

## Pūrongo Rangahau | Study Paper 24

# Appendix 4: Timeline of statutory and common law engagement with tikanga

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The following timeline is provided as a supplement to Part Two of this Study Paper. It illustrates how statutes and common law addressing tikanga have developed since 1840 and, as they do so, the inter-relationship between statutes and the common law. The timeline should be viewed with this illustrative purpose in mind. The descriptions of cases and statutes have been shortened. They do not provide a comprehensive analysis of the statutes and cases, which can be found in Part Two.





## THE ENGAGEMENT OF TIKANGA AND STATUTE LAW

1841

### Land Claims Ordinance 1841

The Crown has exclusive right of preemption.  
This right is only explicable upon recognising  
customary land rights.<sup>1</sup>

1844

### Native Exemption Ordinance 1844

Muru-like penalties may apply in interracial  
theft cases.<sup>2</sup> Māori who are convicted of theft  
may pay up to four times the value of the  
goods instead of facing other punishment.<sup>3</sup>

1846

### Residents Magistrates Courts Ordinance 1846

Māori assessors may sit in with any Magistrate in civil  
cases as a "Native Assessor" with significant  
decision-making powers.<sup>4</sup>

1852

### New Zealand Constitution Act 1852

Districts may be set apart where Native "laws, customs,  
or usages... so far as they are not repugnant to the  
general principles of humanity" would apply.<sup>7</sup>

1858

### English Laws Act 1858

The laws of England apply in Aotearoa New Zealand  
"so far as applicable to the circumstances of the said  
Colony of New Zealand".<sup>8</sup>

### Native Districts Regulation Act 1858

The Governor in Council may make regulations within  
districts "...for the suppression of injurious Native  
Customs; and for the substitution of remedies and  
punishments for injuries in cases in which compensation  
is now sought by means of such Customs." <sup>9</sup>

### Native Circuit Courts Act 1858

The Governor in Council may establish districts where  
Native Title has not been extinguished.<sup>10</sup> Within those  
districts Māori assessors may sit with Magistrates in the  
Native Circuit Court with criminal and civil jurisdiction.<sup>11</sup>  
Also, two or more Māori assessors may sit as "The  
Assessors' Court" with all the powers and functions of  
the Native Circuit Court within those districts.<sup>12</sup>

## THE ENGAGEMENT OF TIKANGA AND COMMON LAW

1847

### R v Symonds

Native title is cognisable at common law.  
Gives early recognition to proprietary  
customary interests.<sup>5</sup>

1847 & 1849

### R v Native and R v Rangitapiripiri

Māori laws and customs remain in place unless they  
are contrary to the law of humanity. Smaller matters  
of Native custom are to be left to Māori themselves.<sup>6</sup>



1862

**Native Lands Act 1862**

Several changes to Māori customary rights regarding land are made and the right of pre-emption to the Crown is waived.<sup>13</sup> The Governor may constitute a new court to ascertain Māori land.<sup>14</sup>

1865

**Native Lands Act 1865**

The Native Land Court may make determinations on Māori custom as it relates to Māori land. The purpose is to ascertain the owners of land “still subject to Maori proprietary customs” and to encourage the “extinction of such proprietary customs”.<sup>15</sup>

**Native Rights Act 1865**

Every interest in Māori land over which Native title has not been extinguished will be determined according to the “Ancient Custom and Usage of Maori people so far as the same can be ascertained”.<sup>16</sup>

1867

**Native Schools Act 1867**

Native schools may be established and funded, provided that the ordinary subjects of English education are taught in the English language.<sup>17</sup>

1867

**Papakura Claim of Succession**

Children of intestate Māori will inherit land in equal shares.<sup>18</sup> This decision results in fragmentation of Māori land.

1870

**Kauwaeranga Judgment**

Rights of local Māori to fish the foreshore are recognised, but “title” rejected having regard to “the evil consequences which might ensue from judicially declaring that the soil of the foreshore ... will be vested in the Natives”.<sup>19</sup>

1872

**Re London and Whitaker Claims Act 1871**

The Crown is the sole source of title to land.<sup>20</sup> That does not prevent the Crown from recognising Māori customary rights at common law.<sup>21</sup>

1877

**Fish Protection Act 1877**

The “rights of Aboriginal natives to any fishery secured to them” under the Treaty of Waitangi are recognised.<sup>22</sup>

1877

**Wi Parata v Bishop of Wellington**

The Crown is the sole arbiter of its own justice.<sup>23</sup> Proprietary customary interests are rejected. The Treaty is a “simple nullity”, and Māori are said to have no form of civil government or law.

1881

**The Native Succession Act 1881**

Māori may apply to the Court to “inquire and ascertain who ought to succeed” to Māori land or hereditaments.<sup>24</sup> Courts are to be “guided by Native custom or usage” regarding Māori land and “guided by the law of New Zealand” regarding hereditaments.<sup>25</sup>

## STATUTE LAW

## COMMON LAW

1882

### **Mangakahia v New Zealand Timber Co**

The Court recognises customary interests in land.<sup>26</sup> However, the Court holds that ownership according to Native custom does not enable customary owners to enforce trespass under English law.

1883

### **Native Committees Act 1883**

Elected "Native Committee[s]"<sup>27</sup> may sit as a court of arbitration and determine disputes between natives "where the cause of the dispute has arisen within the district and the matter does not exceed twenty pounds in value".<sup>28</sup>

1888

### **Rira Reti v Ngaraihi Te Paku**

Māori customs and usages are only enforceable insofar as the laws of England provide for their recognition.<sup>29</sup>

1894

### **Native Land Court Act 1894**

The Native Land Court has the exclusive jurisdiction to determine, on the death of any native, the interest in such Native land or personal property according to Native custom.<sup>30</sup>

1895

### **Native Land Laws Amendment Act 1895**

Ōhākī are unable to be recognised as a legally valid distribution of property.<sup>31</sup>

1900

### **Maori Councils Act 1900**

Councils may formulate general plans for the management of Māori within particular districts. The councils' duties include "the suppression of injurious Maori customs, and for the substitution of remedies and punishments for injuries in cases in which compensation is now sought by means of such customs".<sup>32</sup>

1900

### **Mueller v Taupiri Coal-Mines Ltd**

Acknowledges pre-existing customary proprietary rights in riverbeds.<sup>33</sup>

1901

### **Nireaha Tamaki v Baker**

It is "rather late in the day" for the argument to be made as it was in *Wi Parata* that there was no customary law of Māori that the courts could recognise.<sup>34</sup>

1903

### **Wallis v Solicitor General**

As the law stood at the time of the Treaty of Waitangi, the tribes of New Zealand were entitled to dispose of their lands as they pleased, subject only to the right of pre-emption of the Crown.<sup>35</sup>

1907

### **Tohunga Suppression Act 1907**

Provides that it was an offence to practice as a "tohunga" in the manner described in the Act.<sup>36</sup>



## STATUTE LAW

## COMMON LAW

1908

### Public Trustee v Loasby

A three-part test determines whether Māori customs could be recognised in the common law.<sup>37</sup>

1909

### Native Land Act 1909

Whāngai is not recognised as a legal adoption according to New Zealand law. Instead, an order must be made subject to certain requirements by the Native Land Court.<sup>38</sup>

Assumes the existence of customary title independent of Crown recognition.<sup>39</sup> Customary title is not enforceable in any Court against the Crown.<sup>40</sup> Crown action is unable to be challenged in any court on the basis the customary title had not been duly extinguished.<sup>41</sup>

1910

### Baldick v Jackson

Rights to whaling are not affected by an English statute given this was inconsistent with recognising Māori fishing rights preserved by the Treaty.<sup>42</sup>

1912

### Tamihana Korokai v Solicitor General

The Native Land Court has jurisdiction to determine Māori customary rights in lake beds.<sup>43</sup>

1914

### Waipapakura v Hempton

Customary rights to fishing in tidal waters are unenforceable in the absence of statutory recognition.<sup>44</sup>

1915 & 1943

### War Pensions Acts 1915 & 1943

Recognise marriage in accordance with “native custom” when claims of partners to a war pension are being determined.<sup>45</sup>

1917

### Tua Hotene v Morrinsville Town Board

The bed of a river is vested in adjacent landowners according to the *ad medium filum* rule.<sup>46</sup>

1919

### Hineiti Rirerire Arani v Public Trustee

The right of Māori to adopt according to Māori customs is not interfered with by the adoption provisions in the Native Lands Act.<sup>47</sup>

1945

### Māori Social and Economic Advancement Act 1945

Tribal committees and Māori wardens are established and are empowered to promote Māori interests within the districts.<sup>48</sup>

## STATUTE LAW

## COMMON LAW

1950

### R v Morison

At the time the Treaty was signed the Wanganui River was held by Māori according to their custom and usages, but any such rights vested with the adjacent lands.<sup>49</sup>

1951

### Maori Purposes Act 1951

Māori are subject to the same marriage law requirements as Europeans.<sup>50</sup>

1953

### Maori Affairs Act 1953

Marriage or adoption in accordance with Māori custom is not valid.<sup>51</sup> No Māori will is valid unless executed in the same manner as a European will.<sup>52</sup>

1955

### Adoption Act 1955

No person is capable of being adopted in accordance with Māori custom.<sup>53</sup>

1955

### Re the Bed of the Wanganui River (No 1)

Potential for customary rights in the Wanganui riverbed acknowledged irrespective of adjacent land ownership.<sup>54</sup>

1956

### Inspector of Fisheries v Ihaia Weepu

Customary rights to fish in the river are extinguished with the vesting of adjacent lands and riverbed.<sup>55</sup>

### Re the Bed of the Wanganui River (No 2)

Any customary title to the bed of the Wanganui River was transferred with the alienation of the adjacent land.<sup>56</sup>

1963

### Re the Ninety Mile Beach

Pre-existing customary rights to foreshore acknowledged but they did not survive statutory extinguishment.<sup>57</sup>

1965

### Keepa v Inspector of Fisheries

Any fishing rights in the foreshore do not survive alienation of the adjacent lands.<sup>58</sup>

1967

### Maori Affairs Amendment Act 1967

The registrar of a relevant court must change the status of Māori freehold land owned by up to four owners to General land.<sup>59</sup> Determinations of succession to real and personal property of Māori must be made as if the deceased had been a European.<sup>60</sup>

1968

### Guardianship Act 1968

The only guardians of a child as of right are the natural birth mother and father of the child.<sup>61</sup>

## STATUTE LAW

1975

### **Treaty of Waitangi Act 1975**

The Waitangi Tribunal is established and has jurisdiction to consider claims for breaches of the Treaty.

### **Protected Objects Act 1975**

The ownership and custody of taonga tūturu is determined by the tikanga of the people associated with the taonga.<sup>62</sup>

1976

### **Property (Relationships) Act 1976**

Amended in 2001 to exclude “taonga” from the definition of “family chattels”.<sup>63</sup> Taonga is not defined in the Act.

1977

### **Town and Country Planning Act 1977**

Recognises in principle “the relationship of the Maori people and their culture and traditions with their ancestral land”.<sup>64</sup>

1985

### **Criminal Justice Act 1985**

Offenders may call witnesses to speak to the ethnic or cultural background of the offender.<sup>65</sup>

### **Law Commission Act 1985**

In making its recommendations, the Law Commission must consider te ao Māori.<sup>66</sup>

## COMMON LAW

1986

### **Te Weehi v Regional Fisheries Officer**

Courts should not render indigenous rights conceptually in terms only appropriate to English law systems. Right to fish remains despite alienation of adjacent lands.<sup>67</sup>

1987

### **Huakina Development Trust v Waikato Valley Authority**

“[T]he Treaty is part of the fabric of New Zealand society”, it has a status “perceivable, whether or not enforceable, in law” and it contains “promises which the Crown is obliged to perform”.<sup>68</sup> Also, “customs and practices that include spiritual elements are cognisable in a court of law provided they are properly established, usually by evidence.”<sup>69</sup>

### **The Royal Forest and Bird Protection Society v W A Habgood Ltd**

The definition of “ancestral land” in the Town and Country Planning Act 1977 is not limited only to land owned by Māori.

“There may be a danger in interpreting what a European would describe as his or her ancestral land. What is required to be determined is the relationship of the Maori people and their culture and traditions with their ancestral land”.<sup>70</sup>



**1988****Coroners Act 1988**

Coroners must have regard to certain matters when deciding whether or not to authorise the examination of a body. These include a person's ethnic origins, social attitudes, customs, or spiritual beliefs.<sup>71</sup>

**1989****Children, Young Persons and Their Families Act 1989  
(now Oranga Tamariki Act 1989)**

In principle, a young person's whanau, hapū and iwi are key considerations when making decisions under the Act.<sup>72</sup> Several provisions allow the child's whakapapa and cultural ties to be considered.<sup>73</sup>

**1991****Resource Management Act 1991**

Recognises, in principle, "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga".<sup>74</sup> "[K]aitiakitanga" must be considered when exercising powers under the Act.<sup>75</sup>

Amendments in 2017 provide for shared decision-making agreements between local government and tangata whenua, through their iwi authorities, to participate in resource management decisions.<sup>76</sup>

**1992****Treaty of Waitangi (Fisheries Claims) Settlement Act 1992**

Transfers a portion of commercial fishing quotas to Māori.<sup>77</sup> Customary food gathering is recognised through regulations.<sup>78</sup>

**Mental Health (Compulsory Assessment and Treatment) Act 1992**

In exercising powers under this Act, recognition must be given to the person's cultural identity and ties with their whanau, hapū and iwi.<sup>79</sup>

**1993****Te Ture Whenua Māori Act 1993**

Creates a significant shift in Māori land policy, with a focus on retaining Māori land within Māori ownership.

**1995****Waikato Raupatu Claims Settlement Act 1995**

Legislates for the deed of settlement reached between Waikato and the Crown for historical confiscation of Waikato land. This is the first major historical settlement Act of many that involve recognition of tikanga.<sup>80</sup>

## STATUTE LAW

## COMMON LAW

1997

### **Barton-Prescott v Director-General of Social Welfare**

Tikanga concepts, including whānau and whakapapa, are important in determining what is in the best interests of the welfare of a Maori child.<sup>81</sup>

1998

### **Watercare Services Ltd v Minhinnick**

Whether an activity is “noxious, dangerous, offensive or objectionable” should be approached from the perspective of the wider community. The approach of the High Court in directing itself by reference to a reasonable Māori person representative of the Māori community was wrong.<sup>82</sup>

1999

### **McRitchie v Taranaki Fish and Game Council**

Customary fishing rights do not attach to introduced species that have been regulated since their introduction.<sup>83</sup>

2000

### **Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission**

Those entitled to benefit in the Māori fisheries settlement are successors of the “iwi” in a traditional sense, that is, all people who share kin links and genealogy.<sup>84</sup>

2002

### **Climate Change Response Act 2002**

Members of the Climate Change Commission must have an understanding of the Treaty of Waitangi and te ao Māori (including tikanga Māori).<sup>85</sup> When exercising powers under the Act, the Commission must have regard to “the Crown-Māori relationship, te ao Māori...and specific effects on iwi and Māori”.<sup>86</sup>

### **Sentencing Act 2002**

Courts “must take into account the offender’s personal, family, whānau, community and cultural background in imposing a sentence...”.<sup>87</sup>

Offenders may request the court to hear any person to speak on the cultural background of an offender.<sup>88</sup>

2003

### **Attorney General v Ngati Apa**

Customary proprietary interests, in the context of land, continue to exist unless such interests have been expressly extinguished in the statute.<sup>89</sup>

2004

### **Proprietors of Parininihi ki Waitotara Block v Ngaruahine Iwi Authority**

The Loasby test contains the criteria that Māori custom must meet to be part of the common law in Aotearoa New Zealand.<sup>90</sup>

2006

**Coroners Act 2006**

The Coroner must consider the customary requirement that immediate family members be able to view, touch, or remain with or near the body according to tikanga Maori.<sup>91</sup>

2011

**Marine and Coastal Area (Takutai Moana) Act 2011**

Repeals the Foreshore and Seabed Act 2004. Provides the right for iwi, hapū and whānau to seek legal recognition of protected customary rights and customary marine title.<sup>93</sup>

2014

**Te Urewera Act 2014**

Te Urewera has a legal personality in recognition of Ngāi Tūhoe tikanga.<sup>99</sup>

**Heritage New Zealand Pouhere Taonga Act 2014**

All persons performing functions under the Act must recognise “the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, wāhi tupuna, wāhi tapu, and other taonga”.<sup>100</sup>

2007

**R v Iti**

A similar test to Loasby is applied for recognition of customs in the criminal law context. The custom in question – the discharge of a firearm on the marae ātea – is not reasonable in the circumstances.<sup>92</sup>

2012

**Paki v Attorney-General**

Ngati Apa continues to be good law. “[A]pplication of the common law presumption of riparian ownership to the middle of the flow could not arise until Maori customary interests were excluded”.<sup>94</sup>

**R v Mason**

A parallel or alternative criminal justice system based on tikanga Māori is not available to Māori.<sup>95</sup> Tikanga can play “a meaningful role in criminal proceedings, provided it can be accommodated within the existing statutory system.”<sup>96</sup>

The Court of Appeal observes “tikanga is not presently a viable legal process for serious crime even if continuity of custom could be demonstrated”.<sup>97</sup>

**Takamore v Clarke**

Tikanga values, like other important values, are relevant to the development of the common law and should be balanced alongside other relevant factors.<sup>98</sup>

2016

2016

**Te Ture mō Te Reo Māori Act 2016**

Te reo Māori an official and indigenous language of Aotearoa New Zealand.<sup>101</sup>

**Fenwick v Naera**

The strict no self-dealing rules of fiduciary relationships apply to trustees of ahu whenua trusts under Te Ture Whenua Maori Act 1993, even though it is common for trustees to have overlapping interests as beneficiaries in multiple trusts in Māori land governance.<sup>102</sup> Tikanga was not considered in evaluating the application of the rule, however, “cultural factors” may be relevant in terms of remedy for breach.<sup>103</sup>

**Re Tipene**

The first application under the Marine and Coastal Area (Takutai Moana) Act 2011 for an order recognising customary marine title. The High Court finds “overwhelming” evidence of the claimant group’s exclusive use and occupation of the Tītī islands since 1840 and that the relevant area had been held in accordance with tikanga.<sup>104</sup> An order recognising customary marine title should be made.<sup>105</sup>

2017

**Te Awa Tupua (Whanganui River Claims Settlement) Act 2017**

“Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person”.<sup>106</sup>

**Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017**

Modifies and renames the Children, Young Persons and Their Families Act 1989. The principal sections within the Act are expanded by recognising mana tamaiti, whakapapa and whanaungatanga.<sup>107</sup>

2018

**Tukaki v Commonwealth of Australia**

Tikanga values can be weighed in the interpretation and application of s 8 of the Extradition Act 1999 despite no reference to tikanga in the Act.<sup>108</sup>

**Ngāti Whātua Ōrākei Trust v Attorney General**

“Rights and interests according to tikanga may be legal rights recognised by the common law and, in addition, establish questions of status which have consequences under contemporary legislation”.<sup>109</sup>

**Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation**

Decision-maker has a statutory obligation to give effect to the principles of the Treaty of Waitangi. Failure to have proper regard to mana whenua when considering whether to grant concessions to conduct guided tours on Rangitoto and Motutapu islands is an error of law.<sup>110</sup>

**Kusabs v Staite**

Regard must be had to whanaungatanga when considering fiduciary duties in the context of Māori land administration.<sup>111</sup>

2019

**Kāinga Ora – Homes and Communities Act 2019**

The board of Kainga Ora must ensure systems and processes, for the purposes of carrying out its urban development functions, protect Māori interests in land.<sup>112</sup> The board must recognise and provide for “the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites, wāhi tapu, and other taonga”.<sup>113</sup>



## 2020

**Education and Training Act 2020**

The integration and reflection of tikanga Māori within the schooling system are key objectives of schools and other special institutions.<sup>114</sup>

**COVID-19 Recovery (Fast-track Consenting) Act 2020**

There is an expert consenting panel for considering projects under the Act.<sup>115</sup> Collectively, the members of the panel should have “expertise in tikanga Māori and mātauranga Māori”.<sup>116</sup> The panel must also “recognise tikanga Māori where appropriate” in the conduct of a hearing.<sup>117</sup>

## 2021

**Ngawaka v Ngāti Rehua-Ngātiwai ki Aotea Trust Board (No 2)**

Courts must be careful about ‘finding’ tikanga.<sup>118</sup>

A court’s recognition of tikanga can only ever be at a certain time for a certain purpose.<sup>119</sup> A court’s decision on tikanga cannot change the tikanga as determined by the hapū or iwi.<sup>120</sup>

**Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd**

The Environment Court does not have jurisdiction under the Resource Management Act to confer, declare, or affirm tikanga-based rights, powers and/or authority.<sup>121</sup> This jurisdiction rests in the High Court and/or Māori Land Court.<sup>122</sup>

**Re Edwards (Te Whakatōhea No 2)**

In the context of claims under the Marine and Coastal Area (Takutai Moana) Act, whakapapa and whanaungatanga are important concepts in a court’s assessment of whether the applicant group holds an area in accordance with tikanga.<sup>123</sup>

It is not the role of the court to define the tikanga of the applicants.<sup>124</sup> The proper authorities on tikanga are those living persons who retain the mātauranga of their tīpuna.<sup>125</sup>

**Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board**

Tikanga-based customary rights and interests are “existing interests” under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act).<sup>126</sup> Tikanga as law must be taken into account as “other applicable law” under the EEZ Act.<sup>127</sup>

“[E]xisting interests” and “other applicable law” should not only be viewed through a Pākehā lens and all interests “reflect the relevant values of the interest holder”.<sup>128</sup>

**Sweeney v The Prison Manager, Spring Hill Corrections Facility**

“[T]he Courts can, and may have an obligation to, recognise and uphold the values of tikanga Māori in applying the law of judicial review and granting remedies”.<sup>129</sup>



## 2022

**Ngāti Whātua Ōrākei Trust v Attorney-General (No 4)**

Tikanga is a “free-standing” and separate system of law that may be recognised by courts or statutes.<sup>130</sup>

**Ellis v R**

Tikanga will continue to be recognised in the development of the common law of Aotearoa New Zealand as relevant, acknowledging that tikanga is the first law of Aotearoa New Zealand.<sup>131</sup>

The traditional colonial tests for the incorporation of tikanga in the common law should no longer apply.<sup>132</sup>

Care must be taken not to “pick and choose” elements of tikanga and the integrity of tikanga must be taken seriously; tikanga remains rooted in its own world.<sup>133</sup>

**Wairarapa Moana Ki Pouākani Incorporation v Mercury NZ Ltd**

Tikanga is a “principles-based system of law that is highly sensitive to context and sceptical of unbending rules”.<sup>134</sup> Mana whenua was not an absolute determining factor when it came to exercising the Waitangi Tribunal’s resumption power over land.<sup>135</sup>

## ENDNOTES

- <sup>1</sup> *Attorney-General v Ngati Apa* [2003] 3 NZLR 643 (CA) at [36].
- <sup>2</sup> Native Exemption Ordinance 1844, s 7.
- <sup>3</sup> Native Exemption Ordinance 1844, s 7.
- <sup>4</sup> Residents Magistrates Courts Ordinance 1846, s 19.
- <sup>5</sup> *R v Symonds* (1847) NZPCC 387 (SC).
- <sup>6</sup> *R v Rangatapihipiri* [1847] NZSC; and *R v Native (Ratea)* [1849] NZSC. Both cases can be found as part of the New Zealand Lost Cases project run by Victoria University of Wellington. See <[www.wgtn.ac.nz/law/nzlostcases](http://www.wgtn.ac.nz/law/nzlostcases)>.
- <sup>7</sup> New Zealand Constitution Act 1852, s 71.
- <sup>8</sup> English Laws Act 1858, s 1.
- <sup>9</sup> Native Districts Regulation Act 1858, s 2(16).
- <sup>10</sup> Native Circuit Courts Act 1858, s 1.
- <sup>11</sup> Native Circuit Courts Act 1958, s 2.
- <sup>12</sup> Native Circuit Courts Act 1958, s 32.
- <sup>13</sup> Native Lands Act 1862, Preamble.
- <sup>14</sup> Native Lands Act 1862, s 4.
- <sup>15</sup> Native Lands Act 1865, Preamble.
- <sup>16</sup> Native Rights Act 1865, s 4.
- <sup>17</sup> Native Schools Act 1867, s 21.
- <sup>18</sup> “Papakura — claim of succession” (12 April 1867) New Zealand Gazette 19.
- <sup>19</sup> Alex Frame “Kauwaeranga judgement law in the Pacific” (1984) 18 Victoria University of Wellington Law Review 227 at 244.
- <sup>20</sup> Re the Lundon and Whitaker Claims Act 1871 (1872) 2 NZCA 41 at 49.
- <sup>21</sup> *Attorney-General v Ngati Apa* [2003] 3 NZLR 643 (CA) at [18].
- <sup>22</sup> Fish Protection Act 1877, s 8.
- <sup>23</sup> *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72.
- <sup>24</sup> The Native Succession Act 1881, s 3.
- <sup>25</sup> The Native Succession Act 1881, s 3.
- <sup>26</sup> *Mangakahia v New Zealand Timber Co Ltd* (1881) 2 NZLR 345 (SC) at 350.
- <sup>27</sup> Native Committees Act 1883, s 4.
- <sup>28</sup> Native Committees Act 1883, s 11.
- <sup>29</sup> *Rira Reti v Ngaraihi Te Paku* (1888) 7 NZLR 235 (CA) at 238–240.
- <sup>30</sup> Native Land Court 1894, s 14.
- <sup>31</sup> Native Land Laws Amendment Act 1895, s 33.
- <sup>32</sup> Maori Councils Act 1900, s 15.
- <sup>33</sup> *Mueller v Taupiri Coal-Mines Ltd* (1900) 20 NZLR 89 (CA).
- <sup>34</sup> *Nireaha Tamaki v Baker* [1901] AC 561 (PC) at 382–383.
- <sup>35</sup> *Wallis v Solicitor-General* [1903] AC 173 (PC) at 179.
- <sup>36</sup> Tohunga Suppression Act 1907, Preamble.
- <sup>37</sup> *Public Trustee v Loasby* (1908) 27 NZLR 801 (SC) at 806.
- <sup>38</sup> Native Land Act 1909, ss 161 and 165.
- <sup>39</sup> *Attorney-General v Ngati Apa* [2003] 3 NZLR 643 (CA) at [47].
- <sup>40</sup> Native Land Act 1909, s 84.
- <sup>41</sup> Native Land Act 1909, s 85.
- <sup>42</sup> *Baldick v Jackson* (1910) 30 NZLR 343 (HC).
- <sup>43</sup> *Tamihana Korokai v Solicitor-General* (1912) 32 NZLR 321 (CA) at 345.
- <sup>44</sup> *Waipapakura v Hempton* (1914) 33 NZLR 1065 (HC) at 1067 and 1068.
- <sup>45</sup> War Pensions Act 1915, s 8 and War Pensions Act 1943, s 44.
- <sup>46</sup> *Tua Hotene v Morrinsville Town Board* [1917] NZLR 936 (HC) at 945.
- <sup>47</sup> *Hineiti Rirerire Arani v Public Trustee of New Zealand* [1920] AC 198 (PC).

48 Maori Social and Economic Advancement Act 1945, ss 11 and 14–21.

49 *R v Morison* [1950] NZLR 247 (SC) at 256–257.

50 Maori Purposes Act 1951, s 8.

51 Maori Affairs Act 1953, ss 79 and 80.

52 Maori Affairs Act 1953, pt 11.

53 Adoption Act 1955, s 19.

54 *Re the Bed of the Wanganui River* [1955] NZLR 419 (CA).

55 *Inspector of Fisheries v Ihaia Weepu* [1956] NZLR 920 at 928.

56 *Re the Bed of the Wanganui River* [1962] NZLR 600 (CA) at 618–620.

57 *Re the Ninety Mile Beach* [1963] NZLR 461 (CA).

58 *Keepa v Inspector of Fisheries* [1965] NZLR 322 (HC) at 326–327.

59 Maori Affairs Amendment Act 1967, s 6.

60 Maori Affairs Amendment Act 1967, s 76.

61 Guardianship Act 1968, s 6.

62 *Re Chief Executive of the Ministry for Culture and Heritage* (2017) 71 Tairāwhiti MB 267 (71 TRW 267) at [35].

63 Property (Relationships) Amendment Act 2001, s 8.

64 Town and Country Planning Act 1977, s 3(1)(g).

65 Criminal Justice Act 1985, s 16.

66 Law Commission Act 1985, s 5(2)(a).

67 *Te Weehi v Regional Fisheries Officer* [1986] 1 NZLR 680 (HC) at 686–693.

68 *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188 (HC) at 206 and 210.

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72 Children, Young Persons and Their Families Act 1989 (now Oranga Tamariki Act 1989), s 5.

73 Children, Young Persons and Their Families Act 1989 (now Oranga Tamariki Act 1989), ss 20–38 and 187.

74 Resource Management Act 1991, s 6(e).

75 Resource Management Act 1991, s 7.

76 Resource Legislation Amendment Act 2017.

77 Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

78 Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

79 Mental Health (Compulsory Assessment and Treatment) Act 1992, s 5.

80 See for example Ngai Tahu Claims Settlement Act 1998; Ngāti Awa Claims Settlement Act; Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008; and Tūhoe Claims Settlement Act 2014.

81 *Barton-Prescott v Director-General of Social Welfare* [1997] 3 NZLR 179 (HC) at 185, 189 and 191.

82 *Watercare Services Ltd v Minhinnick* [1998] 1 NZLR 294 (CA).

83 *McRitchie v Taranaki Fish and Game Council* [1999] 2 NZLR 139 (CA) at 153.

84 *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 (HC).

85 Climate Change Response Act 2002, s 5H.

86 Climate Change Response Act 2002, s 5M.

87 Sentencing Act 2002, s 8(i).

88 Sentencing Act 2002, s 27.

89 *Attorney-General v Ngati Apa* [2003] 3 NZLR 643 (CA) at [32]–[34].

90 *Proprietors of Parininihi ki Waitotara Block v Ngaruahine Iwi Authority* [2004] 2 NZLR 201 (HC) at [18].

91 Coroners Act 2006, ss 25 and 26.

92 *R v Iti* [2007] NZCA 119, [2008] 1 NZLR 587 at [46]–[47].

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94 *Paki v Attorney-General* [2012] NZSC 50, [2012] NZLR 277 at [18].

95 *R v Mason* [2012] NZHC 1361 at [37].

96 *R v Mason* [2012] NZHC 1361, [2012] 2 NZLR 695 at [38].

97 *Mason v R* [2013] NZCA 310, (2013) 26 CRNZ 464 at [41].

98 *Takamore v Clarke* [2012] NZSC 116, [2013] NZLR 733 at [91]–[100].

99 Te Urewera Act 2014, s 3.

100 Heritage New Zealand Pouhere Taonga Act 2014, s 4.

101 Te Ture mō Te Reo Māori 2016, s 5.

102 *Fenwick v Naera* [2015] NZSC 68, [2016] 1 NZLR 354 at [97]–[101].

103 *Fenwick v Naera* [2015] NZSC 68, [2016] 1 NZLR 354 at [125].

104 *Re Tipene* [2016] NZHC 3199, [2017] NZAR 559 at [153]–[154].

105 *Re Tipene* [2016] NZHC 3199, [2017] NZAR 559 at [10].

106 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14.

107 Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, ss 5 and 13.

108 *Tukaki v Commonwealth of Australia* [2018] NZCA 324, [2018] NZAR 1597 at [38].

109 *Ngāti Whātua Ōrākei Trust v Attorney-General* [2018] NZSC 84, [2019] 1 NZLR 116 at 119.

110 *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122, [2019] 1 NZLR 368 at [89]–[100].

111 *Kusabs v Staite* [2019] NZCA 420, [2023] 2 NZLR 144 at [124].

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113 Kāinga Ora — Homes and Communities Act 2019, s 4.

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118 *Ngawaka v Ngāti Rehua-Ngātiwai ki Aotea Trust Board (No 2)* [2021] NZHC 291, [2021] 2 NZLR 1 at [58].

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121 *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd* [2020] NZHC 2768, [2021] 3 NZLR 352 at [67].

122 *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd* [2020] NZHC 2768, [2021] 3 NZLR 352 at [67].

123 *Re Edwards (Te Whakatōhea No 2)* [2021] NZHC 1025, [2022] 2 NZLR 772 at [301].

124 *Re Edwards (Te Whakatōhea No 2)* [2021] NZHC 1025, [2022] 2 NZLR 772 at [272].

125 *Re Edwards (Te Whakatōhea No 2)* [2021] NZHC 1025, [2022] 2 NZLR 772 at [272].

126 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801 at [139]–[174].

127 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801 at [9].

128 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801 at [297].

129 *Sweeney v The Prison Manager, Spring Hill Corrections Facility* [2021] NZHC 181, [2021] 2 NZLR 27 at [75].

130 *Ngāti Whātua Ōrākei Trust v Attorney-General (No 4)* [2022] NZHC 843, [2022] 3 NZLR 601 at [355] and [570].

131 *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239 at [172].

132 *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239 at [113]–[116] per Glazebrook J, [177] per Winkelmann CJ and [260] per Williams J.

133 *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239 at [180].

134 *Wairarapa Moana Ki Pouākani Inc v Mercury NZ Ltd* [2022] NZSC 142, [2022] 1 NZLR 767 at [76].

135 *Wairarapa Moana Ki Pouākani Inc v Mercury NZ Ltd* [2022] NZSC 142, [2022] 1 NZLR 767 at [74].

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