# Te Kāhui Tika Tangata New Zealand Human Rights Commission Housing Inquiry

Discussion Paper: Understanding Accountability for Māori

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Te Kāhui Tika Tangata
Human Rights Commission

HE KĀINGA RAWAKA
HE TIKA TANGATA
A decent home is our human right

Whakamanawa ki Runga
Whakamanawa ki Raro
Kia tau te mauri Rangi
Kia tau te mauri Nuku
Heke, heke iho ko te wai
whakaataata o Hinekauorohia
Me pūmahara
Me ngākau rorotu
Turou Hawaiki!


Encourage and inspire above
Support and reassurance below
Be purposeful
Be deliberate
Descend into the reflective
waters of Hinekauorohia
Be insightful, be strategic
Be optimistic
Turou Hawaiki!

# Contents

# Glossary

| | |
|---|---|
| **hāhi** | church |
| **hapū** | sub-tribe |
| **hui** | gathering, meeting |
| **iwi** | tribe |
| **kāinga** | home, village or settlement |
| **kaitiakitanga** | guardianship, stewardship, |
| **kaumātua** | elders |
| **kaupapa** | main purpose, matter for discussion, key topic |
| **kawa** | cultural protocols or rules |
| **Kāwana** | we refer to the kāwana as the Crown |
| **Kāwanatanga** | concept of governance, to govern, |
| **kura kaupapa** | Māori immersion school, generally primary |
| **mana** | authority, prestige |
| **mana motuhake** | autonomy, self-government, self-determination, independence, sovereignty, authority |
| **manaakitanga** | to care for or be hospitable |
| **mātauranga Māori** | Māori knowledge |
| **mātāwaka** | Mātāwaka is a term used when referring to Māori living regions and do not have ancestral ties to that place |
| **ōritetanga** | equity and equality |
| **rangatira** | chief, leader |
| **rūnanga** | council |
| **taha wairua** | spiritual wellbeing |
| **Tangata Tiriti** | terms used for treaty partners for non-Māori people |
| **Tangata Whenua** | Indigenous people with authority over the land |
| **tauiwi** | non-Māori |
| **te ao māori** | Māori worldview |
| **te reo** | Māori language |
| **tikanga** | customary practices |
| **tino rangatiratanga** | self-determination, sovereignty, autonomy |
| **tohungatanga** | expert |
| **tuakana** | senior |
| **wairuatanga** | spirituality |
| **wānanga** | to meet and discuss |
| **whakaaro** | thought, opinion |
| **whakapapa** | genealogy or ancestral connections |
| **whānau** | extended family, family group |
| **whanaungatanga** | process of establishing relationships, interconnectedness |
| **wharekura** | Māori immersion school, generally secondary |
| **whenua** | ancestral land |

# Whakarāpopototanga matua

Ko te kaupapa o tēnei pūrongo matapaki he toro haere i tā Te Ao Māori titiro ki ngā āhuatanga o te papanga i roto i te horopaki o te Uiuinga Wharenoho a Te Kāhui Tika Tangata (HRC) mō te whakarato mōtika ki tētahi whare tōtika. I kīia ko te papanga he papanga whaitake i te pūrongo tuatahi a Te Kāhui Tika Tangata i te tau 2021, kāore anō i toro i ngā tirohanga Ao Māori i taua wā. Ko te hiahia kia noho te pūrongo matapaki mō te titiro a Te Ao Māori ki te papanga hei pūtake mō tētahi huarahi me ngā hoa rangapū mō te papanga inarā i te rāngai wharenoho. Ko te whāinga roa o tēnei matapakitanga, ko te ū ki Te Tiriti o Waitangi ("Te Tiriti") i te rāngai wharenoho. He kaupapa whakapū te Tino Rangatiratanga ki tēnei matapakitanga, arā ko Ngāi Māori e mahi ana mō Ngāi Māori i roto i ngā take e hāngai ana ki a Ngāi Māori, mā te hautūtanga Māori.

Ka tautohua ko te papanga Ao Māori he tikanga whai hua mauroa o te tikanga Māori, tae atu ai ki te mārama o te take, te whai kawenga me te papanga, ko te whai wāhi me te whakatau ngātahi, me ngā pūnaha paremata. Hei āpiti atu, ko te tikanga o te kawa tētahi o ngā uara taketake o te marae, ā, he ariā hei āwhina pea ki te tautuhi i aua āhuatanga o te wharenoho Māori e kore e taea te whiriwhiri. He rerekē te whakahaere i te tikanga Māori me te kawa i waenga i tēnā iwi, i tēnā hapū, ā, ina whakamahia ana, he āhuatanga tautoko pātahi, ka whakaurua ki ngā mātāpono me ngā uara, e hāngai ana hoki ki te horopaki.

Hei āwhina i ngā kōrerorero mō te hunga, te wāhi rānei e noho papanga ana, ka whakamahia ētahi tauira ki te tautohu i ngā matapakitanga o te wā mō te papanga a Ngāi Māori ki a Ngāi Māori anō, mō te papanga a te Kāwana ki a Ngāi Māori, mō te papanga a te Kāwana ki ngā Tāngata Tiriti me te papanga a Ngāi Māori ki te Kāwanatanga. Ka tautohua ngā kōwhiringa e urupare ana ki Te Tiriti. Kei roto i ērā ko te tauira i whakawhanakehia mō Te Aka Whai Ora, me ētahi atu marohi mō ngā āhuatanga rerekē o te papanga pātahi me te mana motuhake. Kei te rapua ināianei ngā whakahokinga kōrero hei hāpai i tēnei matapakitanga. Ko te arotahi o tēnei toronga, he whakawhanake i te māramatanga pai ake ki ngā āhuatanga o te papanga o Ngāi Māori ki a Ngāi Māori anō. Ka whakaratoa ētahi tauira o ngā anga mana urungi ā-hanganga me ngā tukanga e pai ake ai pea te papangatanga ki a Ngāi Māori ā-hapori, ā-rohe, ā-motu hoki, hei tautohu i ngā tauira āwhina mō te anamata. E rua ngā tauira nō tāwāhi kua whakaurua ki tēnei matapakitanga.

Ko ngā kitenga e whai ana ki te āwhina i te aronga whānui o ngā mahi mō te papangatanga i te rāngai wharenoho ko:

- Ko te pūtake o te papangatanga Ao Māori ko ngā tikanga Māori, e haere ngātahi ana me te kaupapa, te kawa, te kaitiakitanga, te whakapapa, te wairuatanga me te mātauranga Māori, ā, ka hāngai ki te horopaki.
- Ko te mōhiotanga e haere tahi ana ngā uara o Te Ao Māori me ngā mātāpono e noho nei ngā mahi papanga, ka noho hei kaupapa whakapū i ngā mahi whakatau take mō te wharenoho Māori ā muri ake.
- Kei te hiahiatia ētahi tukanga whai take mō te papangatanga i te taiao Kāwana.
- Tērā anō ngā mahi e hiahiatia ana mō te tukanga pai mō ngā wāhi e hono ai te Kāwanatanga me te Rangatiratanga, tae atu ki te papangatanga pātahi me ngā hua ki ngā rōpū.
- Inā he nui ake te mana motuhake me ngā

kawenga o tētahi tari, manatū rānei, ka nui ake hoki, ka taimaha ake hoki ngā tūmanako papangatanga ki roto i ngā rāngai tūmatanui me te Pāremata. Heoi, ka pai haere te whaihua o ngā mahi i te rāngai tūmatanui mēnā ka whai mana motuhake.

- Ka pai ake pea te kōkiri i ngā mōtika ki te whai whare tōtika mō te Māori mā tētahi kāhui wharenoho Māori motuhake.

Koinei ngā tūtohinga o tēnei rangahau:

- Me rapu tohutohu i ngā kaiārahi wharenoho Māori, ngā hoa rangapū me ngā hapori
- E tika ana kia noho te hononga ki waenga i te Karauna me te Tangata Whenua, i takea mai i te haepapa me te papangatanga pātahi, hei whakaarotau, kia tutuki ai ngā mōtika a Ngāi Māori ki tētahi whare tōtika.

- Kei te tūtohitia tētahi hanganga motuhake hou mō ngā wharenoho mō Ngāi Māori hei urupare atu ki Te Tiriti.

Ko ngā aukatinga ki te urupare ki ngā panonitanga: ko te kore hiahia o te Kāwana ki te tuku mana whakahaere e tohua nei e tōna whakahē mauroa ki te Whakapuakitanga o te Rūnanga Whakakotahi i ngā Iwi o te Ao mō ngā Tika o ngā Iwi Taketake; ko ngā taukumekume hītori me te kore mārama o te iwi tūmatanui whānui ki ngā kōrero tuku iho mō tō tātau hītori tāmitanga; me te kore whakapono ki ngā aheinga me ngā papangatanga a Ngāi Māori. Kei te tūtohitia te tuku mōhiohio tūmatanui mā ngā ataata me ngā whakawhiti kōrero whaihua e pā ana ki te hītori o Te Tiriti me te tāmitanga.

# Executive summary

The purpose of this discussion paper is to explore and understand what the concept of accountability means for Māori in the context of Te Kāhui Tika Tangata Human Rights Commission Housing Inquiry into the provision of rights to a decent home. Accountability was defined as constructive accountability in the first Human Rights Commission 2021 report, [1] which had yet to explore a Te Ao Māori view. The discussion paper on Māori understandings of accountability is intended to form the basis of an approach with Māori partners on accountability specifically in the housing sector. The longer-term aim of the discussion is compliance with Te Tiriti o Waitangi in the housing sector. Tino rangatiratanga – Māori acting for Māori in matters relevant to Māori – through Māori leadership is fundamental to this discussion.

Te Ao Māori accountability is identified as the long-term effective method of tikanga Māori, which includes clarity of purpose, responsibility, accountability, collective participation, and decision making, and systems of redress. In addition, the customary practice of kawa, which has been a fundamental value at the marae level, may be a helpful concept to identify those aspects of Māori housing that are not negotiable. There is variability amongst hapū/iwi in the practice of tikanga Māori and kawa, which, as applied practice, is generally mutually supportive, integrated into principles and values and context related.

To assist discussion about to whom or where accountability lies, a series of models and corresponding examples of each model are used to identify the current discussion on Māori accountability to Māori, Kāwana (Crown) accountability to Māori, Kāwana accountability to Tangata Tiriti and Māori accountability to Kāwana. Options that respond to Te Tiriti are identified. They include the model developed for the independent Māori Health Authority and further suggestions with different aspects of mutual accountability and self-determination. Sought now is feedback to enhance this discussion. The focus of this exploration is to develop a better understanding of Māori accountability to Māori. Examples of structural governance models and mechanisms that may better enable accountability to Māori at the local, regional, and national level are provided to identify helpful models for the future. Two overseas examples add to this discussion.

The findings are intended to assist in a broader scope of work on accountability in the housing sector:
- Te Ao Māori accountability is based on tikanga Māori in conjunction with kaupapa, kawa, kaitiakitanga, whakapapa, wairuatanga and mātauranga Māori and is context based.
- The recognition that the intertwined nature of Te Ao Māori values and principles within which accountability practices sit is fundamental to future decision making for Māori housing.

- Effective methods for ensuring accountability in the Kāwana sphere are needed.
- Further work is needed on the mechanism that may best operate in the relational sphere between Kāwanatanga and Rangatiratanga, including mutual accountability and its benefits to parties.
- The more autonomy and responsibility of a department or authority, the higher and more stringent the accountability expectations are likely to be in the public and parliamentary sectors. However, performance in the public sector increases with autonomy.[2]
- The rights of a decent home may best be advanced for Māori through an independent Māori housing kāhui.

The following are recommendations from this research:
- Advice is needed from Māori housing leaders, partners, and communities.
- The relationship between the Crown and Tangata Whenua, which is based on mutual responsibility and accountability, should be a priority to achieve the right to a decent home for Māori.
- A new independent structure for housing for Māori that would respond to Te Tiriti is recommended.

The barriers to addressing changes are:
- Kāwana reluctance to share power as indicated by the extended opposition to the United Nations Declaration of the Rights of Indigenous Peoples
- contested histories and lack of a wide public understanding of our colonial history
- lack of trust of Māori capabilities and accountabilities.

Public information in the form of documentary films and effective communication on the history of te Tiriti and colonisation is recommended.

# Part One: Introduction
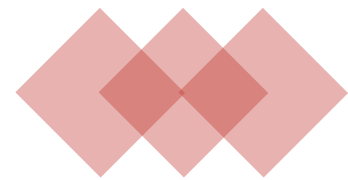
The purpose of this discussion paper is to address how accountability can be implemented, strengthened, or enhanced, acknowledging Māori understandings of accountability, to arrive at mechanisms and structural options that could achieve decent homes for Māori in alignment with Te Tiriti o Waitangi. This discussion paper will build on current work programmes such as MAIHI[1] Ka Ora – The National Māori Housing Strategy[3] and is offered to contribute to the WAI 2750 Housing Policy and Services Inquiry discussion. The discussion paper briefly examines accountability mechanisms such as independent Tiriti audits. A similar approach could be explored and adopted in the housing system to improve accountabilities and responsibilities to Māori. This discussion paper will form the basis of Te Kāhui Tika Tangata Human Rights Commission engagement approach to exploring accountability mechanisms for the housing sector with Māori partners. Therefore, it could also explore what optional models for an independent Māori housing entity or body might look like, drawing on learnings from the establishment of the Māori Health Authority, which has been frequently referred to in the WAI 2750 Inquiry.

## Scope of the discussion paper

The scope of this discussion paper considers whether accountability (defined as constructive accountability in the Human Rights Commission 2021 report)[4] is understood in the same way from an Ao Māori perspective. Definitions taken from literature for accountability mechanisms from an Ao Māori perspective are discussed together with the circumstances and contexts in which the Māori terms are applied. The levels of accountability in Te Ao Māori sphere are explored from accountability to whānau and hapū, to iwi and to the national level. A range of accountabilities (vertical and horizontal) is discussed utilising models, including Kāwanatanga accountability to Māori and Māori accountability to Kāwanatanga. The implications of accountability in Ao Māori terms and of Te Tiriti and housing are considered with respect to tino rangatiratanga and collective accountability. Structural governance models that reflect mana motuhake are also examined as potential options to better enable accountability to Māori for housing.

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[1] Māori and Iwi Housing Innovation.

# Objectives

There are four key proposed objectives of the discussion paper:

- A review and analysis of relevant policy and academic literature to understand what constructive accountability means in an Ao Māori context.
- Examine and identify models and case studies of accountability mechanisms adopted in an Ao Māori context.
- Explore potential institutional arrangements and the adoption of a Māori housing entity or body with key responsibilities and powers.

- Present key findings and recommendations for a broader scope of work based on the literature, which may also highlight the learnings of accountability within iwi/hapū/marae and Māori organisations.

This scope of work is led and facilitated by an independent researcher in collaboration with the Ahi Kaa team at the Human Rights Commission and will include further discussions with other key parties and stakeholders who play a significant role in the housing system for Māori.

# Framing the approach and identifying the barriers to address

Literature and dialogue on Te Ao Māori concepts identify well-recognised and extensively implemented cultural procedures for accountability. The main accountability concept, tikanga Māori, is part of a broader and integrated understanding of behaviour, responsibilities and obligations that apply flexibly within the community in specific contexts. This is addressed as accountability in terms of Te Tiriti, considering a range of models. Examples of the models illustrate the different directions (horizontal and vertical) of accountabilities. Case studies and mechanisms of accountability are intended to provide further perspectives. The new Māori Health Authority model is considered as a structural model for

enabling greater accountability and compliance with Te Tiriti in the housing sector. Options are developed for a mooted independent Māori housing entity or body that could assure tino rangatiratanga and accountability by Māori to Māori as well as alternative institutional structures. The barriers identified through the adoption of this framework need to be addressed. Barriers that appear to arise from lack of trust by the Treaty partner at all levels and concern or rejection of power sharing are an opportunity to explore solutions. The findings provide direction for further investigations of relationships to address the barriers as well as the implementation of recommended options to achieve equitable access to decent homes.
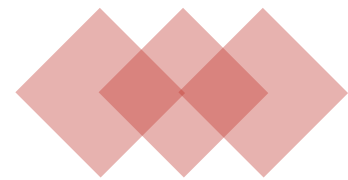
# Background and context

## Te Kāhui Tika Tangata Human Rights Commission Housing Inquiry

The Kāhui Tika Tangata Human Rights Commission is conducting an inquiry into the right to a decent home in Aotearoa. The Inquiry is conducted under section 5(2)(h) of the Human Rights Act 1993 "to inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental if it appears to the Commission that the matter involves, or may involve, the infringement of human rights".

The Inquiry will:
- gather and review housing data and information against New Zealand's national and international standards on the right to a decent home in Aotearoa, grounded in Te Tiriti o Waitangi, as articulated by the guidelines[5]
- assess whether these human rights obligations are being honoured and whether duty bearers are in breach
- report its findings and recommendations to promote and progress the right to a decent home.

## Strengthening accountability and participation in the housing sector

In December 2021, Kāhui Tika Tangata Human Rights Commission published its first report, which "focuses on accountability and public participation in the kāwanatanga sphere (Article 1, Te Tiriti o Waitangi)"[6] and notes explicitly that what works in this sphere may not necessarily align with Te Ao Māori or can extend to Māori spaces, strategies, mechanisms, and institutions. The report highlights the Inquiry's intention to consider accountability in relation to tino rangatiratanga.

Drawing on the first report, this discussion paper aims to understand what 'constructive accountability' means in an Ao Māori context. This approach is critical to ensuring that the housing system honours and gives effect to Te Tiriti o Waitangi. The first report finds that "Aotearoa's housing system should have effective and accessible accountability, that is monitoring, review (independent and non-political), and remedial action in relation to the right to a decent home grounded on Te Tiriti o Waitangi."[7]

The report acknowledges that further consideration and discussion are needed to assess whether this understanding of accountability as monitoring, review and remedial action is consistent with Te Ao Māori: "If this is not consistent with Te Ao Māori, what is a more appropriate way to understand accountability for Aotearoa? Until those discussions have taken place, it is premature to apply accountability, understood as monitoring, review, and remedial action, to tino rangatiratanga (Article 2, Te Tiriti o Waitangi). Therefore, for present purposes, we confine our consideration of accountability and the right to a decent home to the kāwanatanga sphere (Article 1, Te Tiriti o Waitangi)."[8]

The report also recognises that, if Māori are to be heard and Māori experiences and perspectives are given space and weight, Te Ao Māori concepts of housing must be equally understood and valued both at the constitutional partnership level and in local public participation and democratic

engagement. This is important to understand given the Kāwanatanga, tino rangatiratanga and relational spheres in which the housing system operates. Māori need to be able to hold the Kāwana to account when Te Tiriti o Waitangi is breached, in addition to the Waitangi Tribunal. This reinforces the need for nimble and agile institutional arrangements that suit the unique context of Aotearoa, align with Te Ao Māori, are co-designed according to Te Tiriti o Waitangi partnership and deliver the needs of Tangata Whenua, including responding to Māori beliefs, values, and the spiritual dimension as well as to other disadvantaged groups.

## Constructive accountability and effective accountability

The Human Rights Commission 2021 report defined accountability in process terms – monitoring, reviewing and remedial action – and acknowledged that Te Ao Māori may have different understandings. Te Ao Māori views cultural matters as interconnected, so while a discrete sequential process described as "monitoring, independent review in relation to agreed standards and promises and remedial action"[9] is recognised in *He Puapua*,[10] strong accountability systems operate in Te Ao Māori that are integrated with cultural values and principles and can be understood as effective accountability. Therefore, the discussion continues the basis that the outcome sought of strengthening Māori accountability must be an effective, culturally integrated system that could take place alongside a Kāwana accountability system and that is an effective system to meet responsibilities, aims and obligations, especially those of decent homes. By effective accountability, we refer to a system that identifies agreed responsibilities and how and by whom they should be performed, including a mechanism that addresses any breach of accountability within the overall context of established cultural norms. Effective accountability requires a focus on the topic, engagement, and clear communications.
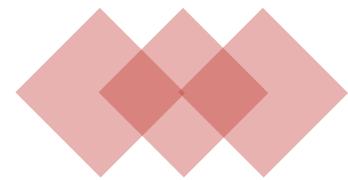
## Te Tiriti o Waitangi and accountability

Te Tiriti o Waitangi is a living document that was signed in 1840 between more than 540 Māori chiefs and representatives of the British Crown.[11] Māori rights are affirmed in Te Tiriti,[12] and the document is recognised as an important part of Aotearoa's constitution. Debate continues surrounding the translation, interpretation, and application of te reo Māori and/or the English text of Te Tiriti, which consists of a preamble and articles. Article 1 outlines Kāwanatanga and recognises the legitimacy of the Kāwana to enable the Crown to govern its own citizens, Article 2 affirms rangatiratanga and retains the rights of Māori to maintain control over their own people, lands and resources, Article 3 guarantees ōritetanga and Article 4 affirms active protection of Māori beliefs and values, which include tikanga, kawa, reo and mātauranga Māori.[13]

Since 1975 when the Waitangi Tribunal was established, there have been significant Treaty provisions in laws passed by Parliament and subsequently interpreted by the courts and the Waitangi Tribunal. The concepts of partnership, protection and participation principles are not new and have been discussed and debated in Treaty jurisprudence for decades. The Waitangi Tribunal raised the important fundamentals of accountability regarding the 1998 Te Whānau o Waipareira Report,[14] where there must be strong consideration of Māori aspirations to address the performance of Crown agencies. Failing to do so is not a reflection of genuine partnership and inhibits the exercise of Māori rangatiratanga.

Te Tiriti o Waitangi is foundational to understanding the systems of accountability. It is important to recognise from the outset that there are two clear distinctive paradigms regarding the concept of accountability between Tangata Whenua and the Kāwana. As Jones describes, "both Māori social organisation and the New Zealand state's liberal-democratic values is the ideal of accountability of leaders and decision-makers to the wider community. It is of course also true to say that these two systems of accountability tend to operate in different ways."[15]

With this in mind, we explore different models of accountability systems inspired by model six (the bicameral model made up of an iwi/hapū assembly and the Crown in Parliament) in the Matike Mai Aotearoa report, which recognises the two spheres of influence of "the 'rangatiratanga sphere', where Māori make decisions for Māori and the 'kāwanatanga sphere', where the Crown will make decisions for its people".[16] This model (Figure 1) has no provision for a relational sphere and is adopted **intentionally** for the purposes of understanding the deficit of accountability systems within the housing sector and institutional arrangements. We adopt this approach to outline and frame this discussion paper and make specific references to the language used in Te Tiriti o Waitangi.

**The Rangatiratanga sphere**   **The Kāwanatanga sphere**

Figure 1. Matike Mai Aotearoa model six.[17]

Te Tiriti o Waitangi is critical to strengthening accountability and participation in the housing sector. According to the Waitangi Tribunal, all Treaty partners are of equal status, and there needs to be accountability and compromise in the relationship.[18] The concept of accountability can be interpreted in various ways – for example, the Crown accountability to Māori or Māori accountability to Māori or even Māori accountability to the Crown. Within the current housing institutional context, there is a deficit of accountability mechanisms. The only independent accountability mechanism for Māori to hold the Crown to account is through the Waitangi Tribunal in the WAI 2750 Housing Policy and Services Inquiry, which is currently under way. This is a kaupapa inquiry that will hear claims and grievances brought on behalf of many whānau, marae, iwi and hapū across Aotearoa concerning housing policy and services.

There are four key themes that guide the Inquiry:
• Housing policy, practice, and regulation of the housing market.
• Social housing – the provision of public housing by the government (central and/or local).
• Use and development of Māori land for housing.
• The relationship between poor physical and mental health (and other socio-economic factors) and housing.[19]

For this discussion paper, we specifically aim to gain a better understanding of Māori accountability to Māori at local, regional, and national levels and explore the potential for institutional arrangements of accountability for the housing sector.

We explore different models of accountability systems with a particular focus on Tangata Whenua. In Figure 2, model one identifies Tangata Whenua (Māori) accountabilities to the Kāwana (Crown), model two identifies the Kāwana accountabilities to Tangata Whenua, model three identifies Tangata Whenua accountabilities to Tangata Whenua, model four identifies Kāwana accountabilities to Tangata Tiriti (non-Māori) and model five identifies the accountabilities of Tangata Whenua and Tangata Tiriti to each other. We are particularly interested in the tino rangatiratanga sphere and exploring what accountability means to Tangata Whenua. The models were developed by the authors, except that of Matike Mai Aotearoa as noted, and aim to explain and demonstrate the accountability levels and spheres. The sources of the models are based on research from small case studies provided in conjunction with more detailed analysis of the accountability relationships. In our models Te Ao Māori sphere is shown as black while the Kāwana sphere is in red.
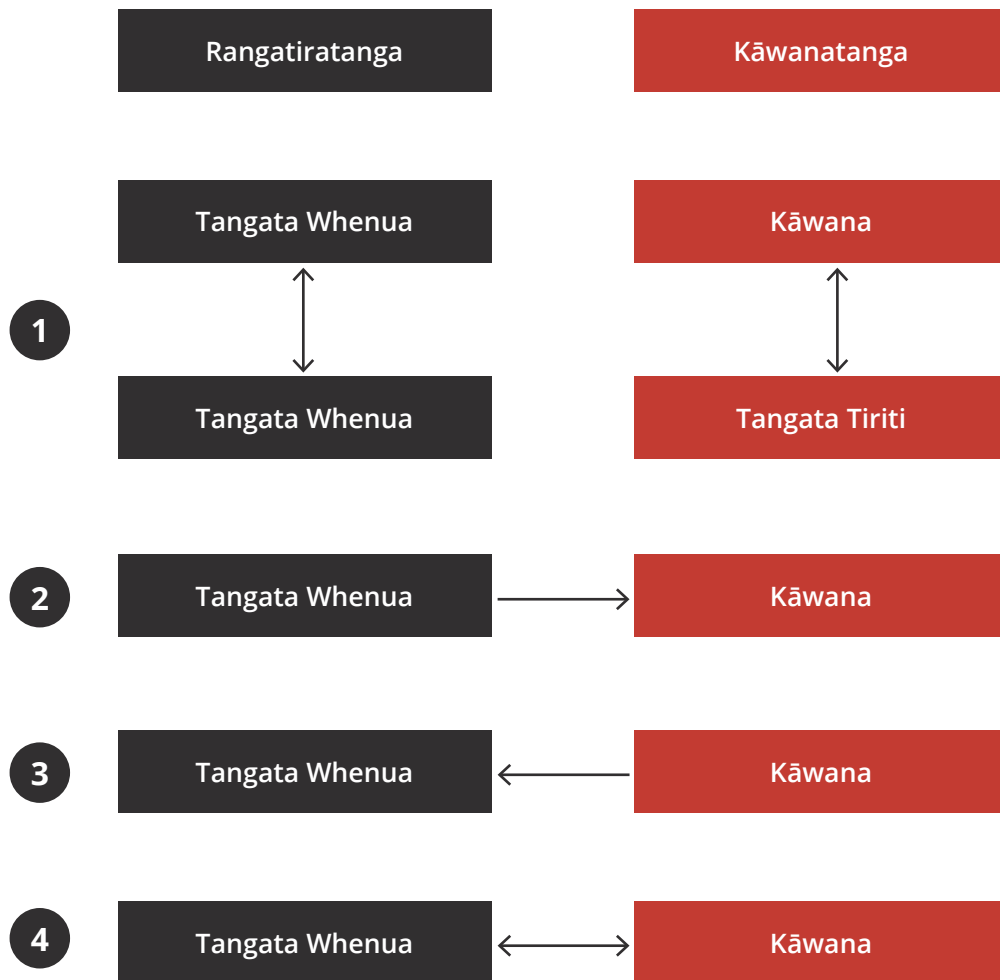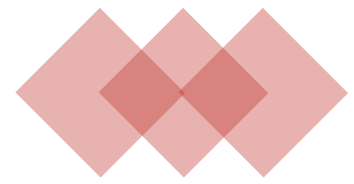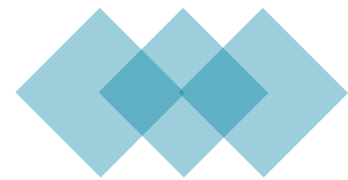
Figure 2. Lines of accountability.

# Part Two: Understanding Te Ao Māori and the concept of accountability

# Tino rangatiratanga

The term 'tino rangatiratanga' was asserted and guaranteed in He Wakaputanga o te Rangatiratanga o Nu Tirene, the Declaration of the Independence of the United Tribes of New Zealand, agreed in 1835.[20] He Wakaputanga uses the term 'tino rangatiratanga' in Article 2, which is translated as independence, referring to whenua as country.[21] In Article 2 of Te Tiriti o Waitangi, Māori were guaranteed te tino rangatiratanga, translated[22] as full chiefly authority over their whenua (land), kāinga (homes) and taonga katoa. The United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) also makes specific reference to self-determination in Article 3: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development."[23] While New Zealand opposed the UNDRIP Declaration when it was adopted by the United Nations in 2007, the Kāwanatanga later endorsed the Declaration in 2010.

The phrase 'tino rangatiratanga' has been translated more recently by Te Aka, the online Māori dictionary, as self-determination, autonomy, self-government as well as sovereignty and control, which implies that, in terms of accountability, Māori are responsible to Māori and acting for Māori. When Māori are accountable to Māori through the process of tikanga Māori, this is an expression or practice of rangatiratanga. Therefore, at the national level, a model of rangatira governance together with accountability would occur if Māori were responsible to Māori rather than as part of a governmental or other structure that is accountable to the Kāwana.

Professor Leonie Pihama has stated, "The Crown and its associated agencies do not enact rangatiratanga, only we enact rangatiratanga".[24]

Māori making decisions for Māori is an expression of rangatiratanga. As described by Linda Tuhiwai Smith, rangatiratanga is the principle of self-determination.[25] This is consistent with the Waitangi Tribunal, which reaffirms how Māori communities protect and strengthen themselves through the exercise of tino rangatiratanga.[26] Drawing on the whakaaro shared by Professor Leonie Pihama, we as Māori must recognise that despite the imposition of colonial systems, tino rangatiratanga is rooted in te ao Māori and has been operating in accordance with tikanga for centuries. As an example of application in contemporary spheres, a recently circulated manual for understanding mental health to guide practitioners refers to tino rangatiratanga as a taha wairua (spiritual) health dimension.[27]

Governments since the time of Prime Ministers George Forbes and Michael Joseph Savage have used terms that aim to come to terms with Te Tiriti while not directly addressing self-determination. Wording such as "the spirit and the letter of the Treaty"[28] as well as the principles of the Treaty were used and later debated along with their "practical application" in the 1970s.[29] The Waitangi Tribunal and recent legislation have referred to the principles of the Treaty, and local governments and others have explored a range of principles.[30] Examples of Treaty of Waitangi principles are those listed on the Ministry of Health website, which provides for how the Ministry meets its obligations under Te Tiriti.[31] The list of principles

with explanations are tino rangatiratanga, equity, active protection, options and partnership. Tino rangatiratanga is described as: "The guarantee … for Māori self-determination and mana motuhake in the design, delivery, and monitoring of health and disability services."[32] In contrast to the principles approach, a Cabinet Office circular noted by the New Zealand Law Society comments "while the courts and previous guidance have developed and focused on the principles of the Treaty, the new guidance takes the text of the Treaty as its focus".[33] The term 'partnership' between the Crown and Māori is also used, in conjunction with reference to the principles, and the concept of partnership has been part of "modern Treaty principles".[34] Terms such as mana, manaakitanga and whakapapa, which have been used in descriptions of Treaty principles, have been used to enable an understanding of Māori terms that are an integral part of customs and tikanga.

In the tino rangatiratanga sphere, Tangata Whenua have their own autonomous hapū organisation and related kinship-based structures. Durie highlights five key aspects in relation to arrangements for tino rangatiratanga, which include iwi, hapū, Māori as individuals, Māori communities of interest and national Māori confederations.[35] These structures are important to understanding how we can continue to advance tino rangatiratanga in the contemporary context and more specifically in the housing system. Matike Mai Aotearoa also referred to rangatiratanga in conjunction with tikanga and whakapapa[36] and particularly in conjunction with "the concept of power generally known as mana (and much later in the 19th century as rangatiratanga)",[37] mana denoting absolute authority. In further explanation in the Matike Mai Aotearoa report, mana could only be exercised in ways consistent with tikanga,[38] which is enhanced by mana.[39] We now move to accountability and tikanga Māori.
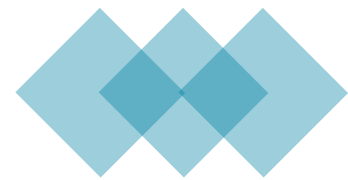
# What do Māori mean by accountability?

Māori have an enduring system of accountability based on tikanga Māori or Māori law. "Tikanga Māori is Māori law – it is the correct way to carry out something in Māori cultural terms ... which encompasses a vast body of knowledge, wisdom and custom ... derived from whanaungatanga, the interconnectedness of all living things through whakapapa."[40] But as Margaret Mutu notes, tikanga Māori is not a fixed or prescriptive group of rules as is English-made law but is related to context and situation. Through this adaptive system, Māori actively and continuously apply tikanga Māori, depending on the circumstances, as a "reliable and appropriate way of achieving and fulfilling certain objectives and goals".[41] Bargh defines tikanga as "a flexible set of values and practices that change and can be adapted over time".[42] Bargh and Malcolm point out that tikanga Māori is provided for in Te Tiriti, with the expectation that the two forms of law, that of the British and Māori, would be applied together from 1840.[43] While Mutu, Bargh and Malcom describe tikanga Māori as law, although different in form and application from British law, it can also be understood as effective accountability because it is continuously applied by whānau and hapū.

Tikanga Māori implies obligations that should be observed by all, and the values and principles that underpin tikanga Māori ensure that every member of the community is a kaitiaki and monitors the understanding of what is correct in the particular context. The community are the eyes and ears to continuously monitor what is appropriate and what is expected of people. Tikanga Māori is an agreed understanding of why things are done, ensuring that the values of whānau and hapū are respected. Tikanga is "the understanding of what is right in the relationships humans have".[44]

Tikanga Māori is supported by many other principles that may be relevant depending on the context and that may differ to some degree throughout Aotearoa. The values that frequently underpin tikanga include kaitiakitanga, manaakitanga, rangatiratanga and whanaungatanga, and these values should not be considered in isolation. A key aspect of accountability in Te Ao Māori is that principles, values, and understandings of relationships of people and environment are interconnected and thus responsibilities and obligations of tikanga Māori are shared understandings that interconnect. "*Whakapapa* suggests that accountability is grounded in kinship, place and intergenerational relationships"[45] or in conjunction with a whakapapa ethic that "people will manage their affairs in a way that is consistent with certain agreed norms".[46] Therefore, application at a national level needs to be specifically applied to that level. Tikanga Māori, while of long standing, is current today and is actively applied. Ani Mikaere defined tikanga as the "first law of Aotearoa, a law that served the needs of Tangata Whenua for a thousand years before the arrival of tauiwi".[47]

The Cabinet Office circular of 2019 noted by the New Zealand Law Society had this to say about tikanga and tikanga Māori: "The courts have recognised tikanga Māori as part of New Zealand common law and as a value that informs development of the common law. While their precise impact on the common law and state will vary, rights at tikanga may have a relevance in legal disputes independent of statutory law incorporation of the Treaty."[48]

# Alternative Māori approaches to accountability

Another way of thinking of effective accountability is through what encompasses kaupapa. While addressing kaupapa in its particular context, as is also essential with tikanga Māori, kaupapa can be considered in relation to kawa. Rev. Māori Marsden[49] describes kawa as having strict rules applied to its application with any mistake considered a transgression. He defines kaupapa as "ground rules, first principles, general principles" and compares the term with tikanga, which he defines as "method, plan, reason, custom, the right way of doing things".[50] Marsden describes kaupapa and tikanga as juxtaposed and interconnected in Māori thinking and describes customary sanctions as being part of tikanga Māori. While kawa is often considered as an immutable ritual and therefore without flexible application as with tikanga, consideration of kaupapa and kawa enables a review of alternative Māori perspectives and how the terms have been used at the marae level. In addition, some hapū/iwi hold differing customary practices, but the two practices may be understood as mutually reinforcing. The adoption of a kawa approach merits inclusion and exploration to establish in future structural change, particularly in the context of what is negotiable and what is non-negotiable.

Whakapapa (as aforementioned) is another concept that is relevant to tikanga, kaupapa and kawa. Whakapapa ties Māori to place and environment, to all things, encompassing mauri and wairua dimensions. Although the Kāwana may not consider whakapapa as part of accountability in its practice, this term along with others previously identified are integrated in the practice of effective accountability in Te Ao Māori sphere.

The tikanga Māori system is based on long-term community testing, and over that time, it has become intertwined in Te Ao Māori culture.

In addition, 'whati tikanga' is the term used when tikanga has been transgressed and the breach is identified. While the breaches of accountability by the Crown have been observed in Te Ao Māori spheres, there are examples where whānau/hapū isolation and disconnection and social and cultural responsibilities have been weakened by the intergenerational trauma of colonialism. This is an aspect that can be addressed through tino rangatiratanga – Māori working for Māori.

A further extension of accountability concepts is the term 'kaitiakitanga'. This can mean trustee, guardian, and caregiver, but it is important in conjunction with tikanga and other concepts in the sphere of responsibility, obligation, and accountability. For instance, it is an obligation resting on each individual and all as a community to care for and nurture the whenua, and this obligation remains whether the land in the relevant context remains as Māori land or has been surveyed, bought, and sold many times. The health of the whenua is part of ancestry, whakapapa and thus also part of the future. The Waitangi Tribunal had this opinion: "Kaitiaki is a community-based concept ... The responsibilities come with the whakapapa of tangata whenua and the kinship bonds which give rise to reciprocal obligations."[51] How the concepts such as kaitiakitanga, whakapapa and the customary practices of tikanga Māori and kawa work together will depend on the context.

# Accountability to whom/what?

As part of the discussion of context (for instance, for tikanga Māori) the responsibility to whom must be considered. The different relationships within whānau, hapū, iwi, rūnanga, marae, trusts and confederations will affect how tikanga Māori should be applied. In most matters, those different groups will all apply a longer-term rather than shorter-term lens to accountabilities and responsibilities that is to the long-term health of the environment and to future generations. Accountability may be to whenua as identity and whakapapa, whenua not being conceived as a commodity.

In the context of Te Tiriti, accountability is likely to be perceived by Māori as an obligation the Kāwanatanga wrote into the provisions of Article 2, which in turn may be enacted by the Kāwana but preferably by Māori enabling tino rangatiratanga. However, in considering Te Ao Māori view, the accountability for enacting tikanga Māori is to Māori as the first priority. In the Matike Mai Aotearoa report, the authors describe tikanga in conjunction with the nature of relationships, providing a detailed analysis of key values, including the value of tikanga.[52] Helpfully, the report notes that values-based tikanga could also be the means to deal with Kāwanatanga/Rangatiratanga to resolve differences and conflicts,[53] indicating that the interface between Rangatiratanga and Kāwanatanga is the appropriate territory for resolution by tikanga Māori. Again, considering to whom accountability is directed, the relationship between the Kāwanatanga and iwi institutions is the sphere in which accountability can be addressed.

# Part Three: Exploring models of accountability

# Tangata Whenua accountability to Tangata Whenua

| Rangatiratanga | Kāwanatanga |
|:---:|:---:|

**Tangata Whenua**

① ↕
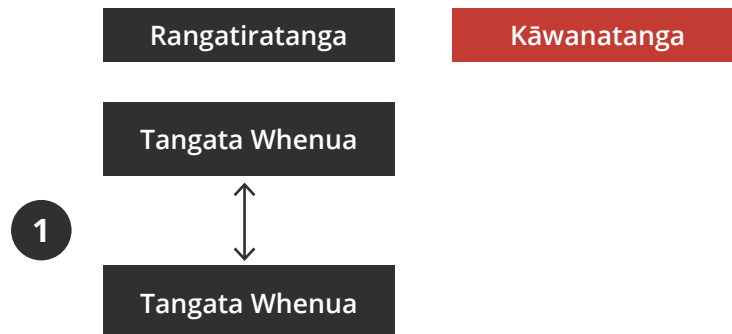
**Tangata Whenua**

Organisations led and controlled by Tangata Whenua require clear accountability mechanisms for their own people. This can be understood by different levels of accountability and in relation to both collective and individual accountabilities. For example, some iwi groups may have a range of accountabilities to Māori organisations, community groups, hapū, whānau, marae, hāhi and others. Accountability processes may include wānanga, hui ā-whānau, hui ā-hapū and hui ā-iwi. Unless the structure of the iwi entity limits direct whānau, hapū and iwi accountability relationships, such as a trust, we understand that tikanga Māori will be applied at the whānau level initially and be applied at each level as the context requires. Even with the legal structure of a trust in place, the tikanga Māori accountability relationship tends to prevail.

Accountability and its relevant context are discussed and agreed by whānau/hapū members at the marae level in Te Ao Māori. The context consideration may relate to a broader scale such as at iwi or national level, but the strength of marae-level accountability is that response and the need for modification is observed and conveyed rather than being siloed and addressed when perceived issues occur. In seeking to achieve change and better outcomes through strengthening accountability, a relevant factor is the contrast

between independent and individual action and responsibility, as is the basis of the Westminster system of laws, and collective responsibility, which is at the heart of Te Ao Māori. The collective approach takes place in a forum where the collective (whānau, marae, hapū and more broadly iwi) have considered the context of a situation and therefore what are appropriate obligations and responsibilities and where they lie and then work as a collective to ensure that this is understood, respected and implemented.

The accountability process that operates and has operated in Te Ao Māori has been discussed. How this applies in practice at whānau, marae, hapū and iwi level can be complex and is becoming more complex as a variety of entities that may have been created through Kāwana processes are also taken into consideration (Figure 3). An example is iwi trusts set up as the result of settlement agreements or for specific purposes. The settlements needed to be negotiated by an iwi, as a Kāwana requirement, but Te Ao Māori accountability mechanism operates from a marae/hapū level. From the point of view of one iwi/hapū as an example, an iwi structure that was resolved because of a Treaty settlement has been mandated through tauiwi law, and the structure is 'not quite right'.
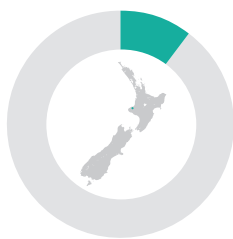
**Local**
The issue affects Māori in a local area. *e.g. individuals, Whānau, Hapū and iwi*
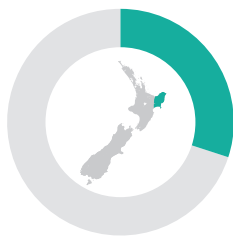
**Regional**
The issue affects Māori in a particular area. *e.g. Iwi organisations, Collectives, Organisations with a particular purpose*

**National**
The issue affects all Māori in Aotearoa. *e.g. National Organisations dedicated to Social, Economic, Environmental, Cultural issues, or interested in all issues related to Māori*

**Figure 3. Māori engagement guidance.**[54]

The whānau and hapū are cultural structures that traditionally supported both prevention and intervention through their practice of tikanga. They prov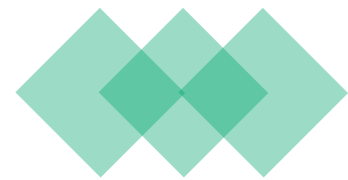ide the collective responsibility for obligations and accountabilities through tikanga Māori. As an extended family structure, the whānau is based within whakapapa relationships, with whanaungatanga in turn defining the relationships and responsibilities of whānau members. An important aspect of this is that whakapapa and whānau enduring relationships establish collective identity. This also carries a responsibility to maintain the well-being of the whānau, hapū or iwi.[55] Durie discusses the domains such as whānau and community based on his model of Te Whare Tapa Whā.[56]

The practice of accountability taking place at the marae/hapū level is directed after discussion by the people as a collective. There are government-driven issues such as three waters at a national level and resource consent applications at a district level as well as issues such as climate change that demand a hapū or iwi response, and this in turn is a matter that may be debated as an aspect of tikanga. The marae/hapū and iwi in such cases have multiple accountabilities to the people as a collective but also to commercial, professional, Kāwana and other entities. Tangata Whenua are receiving numerous calls and must resolve what is the kaupapa and relevant tikanga to ensure the accountability system is able to operate. Collaborations with other iwi on specific issues may be driven by diverse groups. Establishment of clear frameworks for accountability as well as overlapping responsibilities and accountabilities of these geographic collectives are now being addressed. In doing so, for each kaupapa tackled, for each decision and for each accountability, tino rangatiratanga is demonstrated and applied.

Rangatiratanga is a well-understood term in Te Ao Māori having three aspects: a system of Māori leadership that is connected to hapū and mana; as tino rangatiratanga, a term used in the 1835 Declaration of Independence and in the 1840 Tiriti o Waitangi indicating a "most-high form of chieftainship"; and the term "encapsulating the political struggle to uphold sovereignty and self-determination as whānau, hapū, iwi, and as a nation".[57] In a survey of those learned in Te Ao Māori, researchers found that "rangatiratanga has many layers of meaning" and is about "collective leadership, and an individual leadership underpinned by political awareness. Rangatiratanga is a style of leadership that is people led ... Rangatira weave people together and maintain connections despite the multiple complex ways that connections are being attacked and broken down."[58] The writers noted that the most significant outcomes were the unity in

thinking about rangatiratanga, the need to fight for rangatiratanga and "the consistency of values that underpin rangatiratanga".[59] Rangatiratanga covers "all levels of well-being".[60]

While the concept of rangatiratanga can be applied in different contexts and has some complexity, there is a strong association of rangatiratanga with accountability. Rangatiratanga is the leadership within which the collective process of accountability as well as responsibility takes place in Te Ao Māori context. Without rangatiratanga leadership, self-determination and autonomy, accountability mechanisms, that is tikanga Māori, are not able to operate appropriately.

## Te Matapihi He Tirohanga Mo Te Iwi Trust

Te Matapihi He Tirohanga Mo Te Iwi Trust was established in 2010 as the independent national peak body for the Māori housing sector. The Māori housing sector is made up of (but not limited to) whānau, Māori collective landowners, hapū and iwi, the Iwi Chairs Forum, marae, Māori service providers and community providers, Te Tumu Kāinga and Māori involved in the housing sector, including building and related professions. Te Matapihi emerged from the 2010 National Māori Housing Conference in Rotorua and was officially launched in 2012 at the watershed National Māori Housing Conference in Waitangi. Te Matapihi was formally registered as a charitable trust in order to specifically advocate for Māori housing outcomes at a national level, offer an independent voice for the Māori housing sector, assist in Māori housing policy development at

central and local government levels and support the growth of the sector by providing advice, facilitating collaboration and sharing high-quality resources and information.[61] Te Matapihi is an example of a kaupapa Māori-based organisation that also consists of a board and operational team who whakapapa Māori. These aspects locate Te Matapihi in the rangatiratanga sphere with regards to its origins of establishment and accountabilities/ obligations primarily to the Māori housing sector and communities. While Te Matapihi is a trust and therefore has legal requirements for responsibilities and accountabilities, it operates in Te Ao Māori sphere and reflects the whānau, hapū and iwi contextual understanding and application of accountability. While operating at a national level, all Māori members (of the trust) and staff are expected to reflect Māori principles and values.

## National Iwi Chairs Forum

The National Iwi Chairs Forum was established in 2005 and is made up of elected leaders or chairs of hapū and iwi from across Aotearoa. The national collective of 71 iwi entities meets four times a year to discuss national matters of interest. The National Iwi Chairs Forum has also established Iwi Leader Groups to research and work on specific issues. For example, the Iwi Chairs Forum divides its work into five areas or pou:

- Pou Tikanga – constitutional, Treaty claims, reo and tikanga.
- Pou Tangata – social issues.
- Pou Taiao – environmental issues.
- Pou Tahua – economic Issues.
- Pou Take Āhuarangi – climate crisis.

Regarding this discussion paper, Pou Tahua includes prioritising the advancement of iwi/Māori housing aspirations alongside other socio-economic related matters.

While the National Iwi Chairs Forum operates at a national level, it reflects its assignment of responsibility by marae, whānau and hapū. Some leaders may lead or chair their iwi through trust entities, such as Rongowhakaata Iwi Trust, while others lead rūnanga. However, despite this, they reflect the cultural principles and ways of doing including tikanga Māori.

## Early childhood Māori language learning and accountability

### *Te Kōhanga reo*

Recognising that Māori language capability was fast disappearing by 1970s, Māori leaders set up kōhanga reo[62] to focus on total immersion in te reo and tikanga Māori for preschool children. Based on a whānau style of learning, leaders such as Iritana Tāwhirirangi developed the idea and socialised it to marae and hapū around the country. The National Te Kōhanga Reo Trust was formed in 1982/83, supported by a small grant from Māori Affairs for their secretariat. The Trust's policies include accountability for the kaupapa and for any funds. Government involvement included the Department of Social Welfare, Māori Affairs, and the Māori Education Foundation for seed funding. In the 1980s, seed funding and training gained the financial support of the Labour Government, although kōhanga reo often needed

to cover running costs and many of those working at kōhanga reo, who were mainly women, were volunteers.

The Early Childhood Education Taskforce released a report after failing to consult with the Trust, and a claim to the Waitangi Tribunal led by the Māori King was the response. This resulted in policy and legislative changes as the reply to Waitangi Tribunal recommendations, which has helped arrest the loss of te reo Māori.[63] With the transfer of oversight to the Ministry of Education in 1990, kōhanga reo experienced a cultural struggle with bureaucracy. Conversely, in 2010, UNESCO recognised kōhanga reo for empowering whānau to take responsibility for the future. Te Aho Matua o ngā Kura Kaupapa Māori is a philosophical, linguistic, spiritual, values

and tikanga-based statement. While developed by and for kura kaupapa, the philosophy and values of the Aho Matua statement assist the whānau tikanga Māori-based responsibilities and accountabilities of kōhanga reo.

## Puna Kōhungahunga

A puna kōhungahunga is a Māori language play group that is certified by the Ministry of Education based on quality early childhood education programmes for children. While the focus is on learning te reo and tikanga Māori, learning may be bilingual or in te reo Māori only. Under Ministry requirements, a puna kōhungahunga may be no more than four hours a day from one to five mornings a week, and they may be located on marae, with schools and in community buildings. More than half the children attending must have a parent or caregiver present (Education and Training Act 2020). All puna kōhungahunga must operate in terms of the Act, but funding and support from the Ministry are only available to those certified by the Ministry.

## Comparison and accountability

While the kōhanga reo movement was initiated by Māori to conserve the language and has been the foundation for Māori to advance to higher learning following a firm grounding on identity and mana motuhake, funding for kōhanga reo has been very limited. Accountability is to the National Te Kōhanga Reo Trust through tikanga Māori, and although management policy is now under Ministry of Education oversight, that experience appears to have met with barriers. In contrast, the Ministry of Education has appeared to foster puna kōhungahunga. Accountability is also to whānau through tikanga Māori. Both initiatives are intended to support te reo Māori, but the goal of the dual approach is unclear in terms of tino rangatiratanga.

"In any endeavour of Māori development, we come up against the state institutions trying to close us down or forcing us to become part of mainstream e.g. Kōhanga Reo (Māori immersion early childhood learning centre), Kura Kaupapa Māori (Māori immersion school, generally primary), Wharekura (Māori immersion school, generally secondary) …(and) the mainstreaming of Māori services … The Treaty settlement process set down by the perpetrators has split whānau, hapū, and all iwi all over the country."[64]

## Te Hāhi Mihinare | The Māori Anglican Church

The story of Māori accountability to Māori, thus self-determination, within the international institution of the Anglican Church has been one of gradual evolution, not without struggle. Hirini Kaa[65] refers to the establishment of the Anglican Church in the early days of colonisation of Aotearoa New Zealand as "the Anglican Empire", which had parallels in similarly colonised countries such as India, and in Africa. Te Hāhi Mihinare was gradually enabled to assert tikanga and mātauranga, initially encouraged by Anglican leader Reverend Henry Venn, who championed devolution of authority. Venn was the Secretary of the Church Missionary Society of London, the body that sent the CMS Missionaries from 1823 to around 1880. Overlapping this time, Bishop George Selwyn was sent by the Church of England's Bishop of London. He was responsible for appointing bishops for the colonies.

Bishop Selwyn ordained Rota Waitoa as a deacon in 1853 and Riwai Te Ahu in 1860. Bishop William Williams, as Bishop of the new Diocese of Waiapu, later ordained his own people and Selwyn's original deacons as priests. Large numbers of Māori were also trained as teachers and evangelists.

While land wars disrupted the sharing of power with Māori clergy, Māori members of the Church continued with reshaping their faith and asserting the importance of maintaining their tikanga. A key step was the consecration of the Pīhopa, Frederick Bennett, Bishop of Aotearoa, in 1928.

This and subsequent debates on tikanga on self-determination were influenced by "pan-tribal dynamics and Native Church actions overseas,"[66] stimulated by the keen desire of Māori clergy to control and manage their own church matters. The concept was an iwi-driven institution – a Māori church different in form and ritual but retaining all the fundamentals of the Anglican Church.

In 1978, the Aotearoa Council was inaugurated as a semi-autonomous body. Te Hāhi Mihinare was then empowered as a group with representation on the General Synod. Various commissions of the Church were instigated to examine the existing constitution of the Church. The narrative of self-determination was one of strong leadership (such as from Ngata and Winiata), resolved in the General Synod of 1992 when a revised constitution was agreed upon.

Ranginui Walker gave the example of "the Māori Bishop [as a] working model [of the] success of Māori parallel institutions with autonomy within the general framework of New Zealand society".[67] The Anglican Church of Aotearoa New Zealand currently is organised in three 'tikanga': Māori, Polynesian and Pākehā. Te Hāhi Mihinare story of Māori accountability is of continued renegotiation and of mātauranga through Christianity. The gender role has yet to achieve equity in Te Hāhi Mihinare.

## Whai Rawa, Ngāi Tahu

Whai Rawa[68] is an example of a parallel Māori institution with autonomy.[69] Whai Rawa parallels the role of the commercial banking sector. Whai Rawa is a medium to long-term savings and investment scheme set up by Te Rūnanga o Ngāi Tahu in 2006. This scheme is iwi-driven for whānau members. The aim is to encourage savings for identified purposes, including home ownership, and that home may be beyond the Ngāi Tahu takiwā. In 2022, $123 million was in managed funds, 31,500 members were part of the scheme with $20 million withdrawn towards home ownership (or other objectives). The scheme operates through matched savings, investments are transparent, and the matched savings can be put towards ownership of new or existing homes (or other objectives). In addition to distributing funds annually, the scheme aims to increase financial literacy through a children's club, Kaitiaki, which provides guides and other educational material. A fundamental aspect of Whai Rawa is to enable all members to have access to the scheme. Opportunities and initiatives available to registered Ngāi Tahu whānau are outlined on the Ngāi Tahu website.[70] Other scheme initiatives include opportunities for whānau, including business start-ups.

Accountability for this scheme is understood as to the whole organisation of Ngāi Tahu and acknowledged in all outcomes, being always an active process. Accountability is built into the Whai Rawa scheme through its Statement of Corporate Intent, Ngāi Tahu being fully licensed to provide this service for members. As an example, monitoring takes place in reviewing those members of the scheme against those with active accounts. Accountability is understood as tikanga, taking appropriate action, and is acknowledged in all outcomes. Accountability also extends to values that Ngāi Tahu upholds – whanaungatanga, manaakitanga, tohungatanga, rangatiratanga and kaitiakitanga.

Ngāti Whātua Ōrākei Whai Rawa also has a Toi Tupu savings and investment programme.[71]

## Ngāti Hine Health Trust

In the early 1990s, the Kāwana introduced changes in the health sector to separate public health services and purchasing provisions so that public and private health providers could contract for health services. In the last 30 years, further structural changes have been made including to health funding and delivery, with the most recent changes enabling an autonomous Māori Health Authority from 1 July 2022.

Māori providing health services for Māori was encouraged by the health sector structural changes in the 1990s, and Ngāti Hine, part of the wider confederation of Ngāpuhi, set up a not-for-profit health trust in 1992 to provide health services for Māori in its area. Ngāti Hine Health Trust "originally began as a tribal initiative, but demand for its services quickly extended to the wider community".[72] The Trust now services many of the local rural population from Whangārei and north. Holistic health services are provided encompassing social and economic aspects under contract to the government funding entity.

Governed by a board of trustees initially appointed by Ngāti Hine marae, the Trust's aim has been to reinforce rangatiratanga by providing culturally appropriate and integrated health services, which has recently included COVID-19-related responses. The success of the Trust's health services provision has led to the Trust becoming a large employer in the northern area and initiating the development of a pilot housing scheme in 2021. The Trust received funding through the MAIHI Ka Ora housing scheme for the appointment of a project manager to scope housing developments at two project sites, which included community consultation.

Whānau are central to Ngāti Hine organisational structure, and the accountability system of tikanga Māori is to whānau, hapū and iwi although not through the rūnanga structures as this is a Trust. Three kaumātua have been retained as part of the structure as life members.[73]

# Tangata Whenua accountability to the Kāwana

| Rangatiratanga | Kāwanatanga |
|---|---|

**2** | **Tangata Whenua** → **Kāwana**
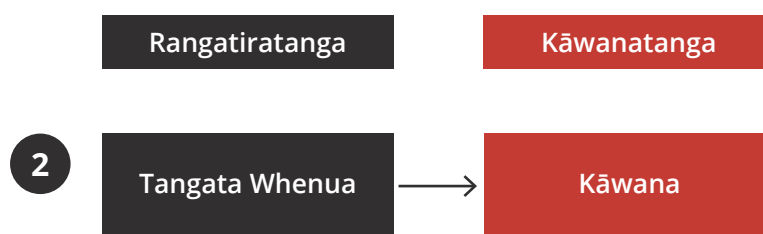
In a range of circumstances, Tangata Whenua may be accountable to the Kāwana. Examples include appointments and relationships where Tangata Whenua advise the Kāwana. For example, Ngā Kaihautū Tikanga Taiao is the statutory Māori Advisory Committee established under section 18 of the Environmental Protection Authority Act 2011. The committee's statutory requirement is to provide advice and assistance from a Māori perspective. Although they may be applying tikanga within their role, the committee's accountability is to the Kāwana.
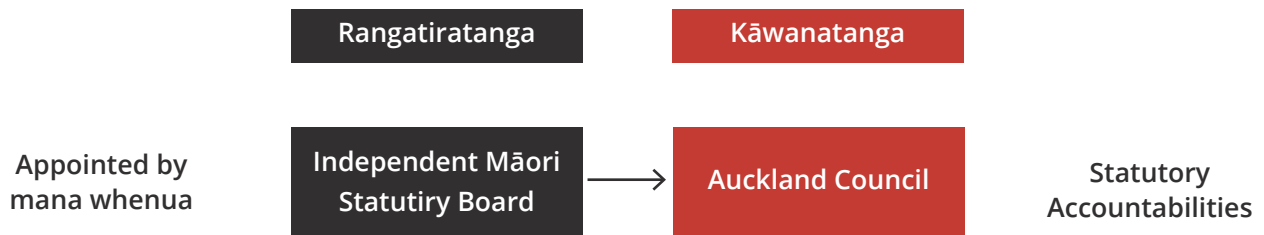
## In what circumstances would Māori be accountable to the Kāwana in terms of tikanga Māori?

Accountability to the Crown outside of contractual or work obligations or Kāwana legal requirements such as taxes and rate payments does not seem to reflect the process of tikanga Māori, which takes place in the Māori sphere. Māori whānau and hapū have an effective, operational accountability system that requires accountability to whānau, hapū and, in identified cases, iwi and at the national level. This tikanga Māori system operates alongside the parliamentary system of laws. However, as a Tiriti partner, the whānau/hapū accountability system is to whānau/hapū through mana motuhake, and that in turn enables Māori to attain tino rangatiratanga. Currently, both Māori and Pākehā are required to respond to parliamentary law. Services are provided in line with Kāwana policies, and there are public (constructive) accountability systems in place to ensure that responsibilities and policies are given effect to (such as penalties for non-payment of taxes). The calls to strengthen the Kāwana accountability systems are discussed in the following sections.

In only limited examples, as our case studies indicate, are Māori able to manage systems for Māori in ways culturally appropriate for Māori, even though examples of mana motuhake or tino rangatiratanga are operating in other countries with positive cultural responses. However, *He Puapua*[74] envisioned a future for Aotearoa New Zealand where tikanga as constructive accountability might also function under the Crown's authority in certain circumstances – in other words, a system that respected the systems of accountability of both Māori and Pākehā.

## Independent Māori Statutory Board

| Rangatiratanga | Kāwanatanga |
|---|---|

| Appointed by mana whenua | Independent Māori Statutiry Board | → | Auckland Council | Statutory Accountabilities |
|---|---|---|---|---|

The Independent Māori Statutory Board (IMSB) mandate is to bring issues of significance to Māori to Auckland Council's attention. The IMSB consists of nine members, which includes two mātāwaka representatives and seven mana whenua group representatives. The IMSB has specific responsibilities and powers and helps Auckland Council make decisions, perform functions, and exercise powers by "promoting cultural, economic, environmental, and social issues of significance for mana whenua groups and mātāwaka of Tāmaki Makaurau and ensuring that Auckland Council acts in accordance with the Treaty of Waitangi".[75] The IMSB operates independently of Auckland Council as stated under section 82 of the Local Government (Auckland Council) Act 2009:

### 82 Board independent

(1) The board is a body corporate separate from—
   (a) the Auckland Council; and
   (b) the board's members; and
   (c) the selection body; and
   (d) the mana whenua groups represented on the selection body.

(2) The board is independent of—
   (a) the Auckland Council; and
   (b) the mana whenua groups represented on the selection body.

(3) The board is not required to accept direction from any person.

(4) When members of the board are acting as members of the board, they must act in the interest of achieving the board's purpose and must not act in any other interest.

Auckland Council has Treaty obligations and must act in accordance with the Treaty of Waitangi. With regards to accountability of the IMSB, Schedule 2 of the Local Government (Auckland Council) Act 2009 states:

### 32 Reporting and audit

(1) The board must prepare an annual report.

(2) The report—
   (a) must include the dates and times of the board's meetings in the financial year; and
   (b) must include a summary of the board's activities in the financial year; and
   (c) may include anything else that the board wants to put in it.

(3) The board must publish the report and provide copies to the Auckland Council and the selection body.

(4) The obligations of the board under the Public Finance Act 1989 are the responsibility of the members of the board.

(5) The board is a public entity as defined in section 5 of the Public Audit Act 2001.

Within the Local Government Act 2009, there is also a clear reference of the accountability of the IMSB regarding the Kāwana. The IMSB utilises a Tiriti o Waitangi audit that is carried out every three years and is an "assessment of Auckland Council's performance in meeting its obligations under the Treaty of Waitangi and statutory responsibilities to Māori".[76]

Audits are critical instruments that are used for accountability and may serve a greater purpose for broader approaches across the housing system and central government accountability to Māori within Te Tiriti context. Further, the Kāinga Strategic Action Plan provides an example of potential Crown and government accountabilities, by requiring measurable housing outcomes for Māori to be included in KPIs for leaders of relevant Crown entities[77].

# Kāwana accountability to Tangata Whenua

| Rangatiratanga | | Kāwanatanga |
|---|---|---|
| **3** Tangata Whenua | ← | Kāwana |
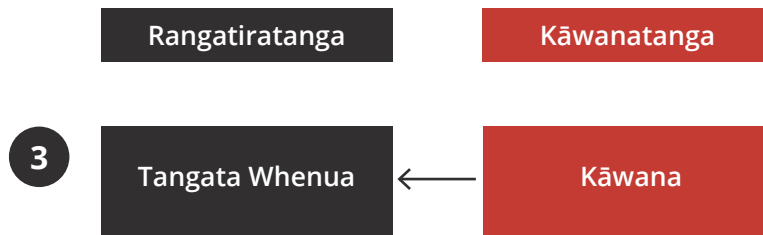
## Kāwanatanga

The Kāwana considers its responsibilities to Māori in the enactment of the legislation, especially more recent laws where such responsibility is explicitly stated – for example, the Ministry for the Environment and oversight of the Resource Management Act 1991 (RMA). This fits the constructive accountability process in terms of monitoring, review, and remediation. However, although accountabilities are identified in the RMA, at Kāwana and local government level, accountability is weak or lacking and mechanisms for redress do not satisfy Māori concerns. As Hudson and Russell note: "Over the years, Māori have made repeated claims to the Waitangi Tribunal that their rights, as guaranteed under the Treaty of Waitangi, have been breached … [and] the State has an obligation to both recognise Māori aspirations for self-determination and protect the interests of Māori."[78] While this may be intended through legislation, the response to Māori, that is, the Kāwana accountability to Māori, requires strengthening. This systemic failure can be explained by different ways of knowing and doing, and "to ignore the reality of inter-cultural differences is to live with outdated notions".[79]

An example relating to lack of responsiveness or application of the RMA is the conflict of values of whenua as a commodity and as an identity for Māori.

Both the Human Rights Commissioner and the Auditor-General have drawn attention to accountability. In his report on public accountability the Auditor-General stated:

> The way we think about public accountability needs to change. Long-term stewardship of New Zealanders' well-being needs to be valued as much as short-term management of current issues.[80]

The Auditor-General's comments refer to the way in which all public organisations demonstrate to Parliament and the public their competence, reliability, and honesty in using public money and resources. However, although this is vital for the Kāwana and the public sector, in this Kāwana system, Te Tiriti is not recognised and "accountability arrangements related to Te Tiriti continue to evolve".[81] This report did

not address the relationship of Māori with the Crown, noted that Parliament "remains the primary accountability institution"[82] but accepted that the "Westminster approach is not aligned with the Māori approach to accountability – for Māori, it is about the relationship not the rights".[83] The Auditor-General in considering public accountability and the Human Rights Commissioner in considering constructive accountability find that understanding what it means to be accountable in Te Ao Māori is important for the Crown and Māori relationship. It is also important for addressing tino rangatiratanga.

## Te Rōpū Whakamana i te Tiriti o Waitangi - Waitangi Tribunal

The introduction of the Waitangi Tribunal "was widely interpreted as a crucial step towards the Crown's honouring of the Treaty".[84] As a permanent commission of inquiry, the Waitangi Tribunal makes non-binding recommendations on claims brought by Māori (a claimant must be of Māori descent) regarding Crown breaches of Te Tiriti o Waitangi. The Tribunal was established in 1975 under the Treaty of Waitangi Act 1975, which Act states in the preamble:

> ... that a Tribunal be established to make recommendations on claims relating to the practical application of the principles of the Treaty and, for that purpose, to determine its meaning and effect and whether certain matters are inconsistent with those principles.

The Tribunal had registered over 2,500 claims in 2015, and just under half of those claims were recommendations to the Government.[85] The establishment of the Tribunal has led to Treaty settlements, including the return of land and resources to claimants by the Crown, and the transfer of some Crown powers and functions. The Tribunal operates in the relational sphere and is technically not independent of the Kāwana, although as part of the judiciary, it stands apart from the Kāwana. The Tribunal comprises 2–20 members (both Māori and Pākehā) who are appointed by the Governor-General on the recommendation of the Minister for Māori Development. This understanding will be critical in the exploration of a Māori Housing Authority and how someone is appointed in representing the Māori housing sector and communities.

The appointment procedure of the Waitangi Tribunal members and their role and performance within the Kāwana judicial system prevent the whānau, hapū, iwi accountability relationship occurring. However, their recommendations frequently, if not always, now align with Te Ao Māori values and tikanga Māori.

## Māori Health Authority

The independent Māori Health Authority was announced in 2021 based on the Waitangi Tribunal WAI 2575 Health Services and Outcomes Inquiry, which highlighted systemic racism and the consistent failure in the healthcare and well-being of Māori.[86] The health reforms to date have been unable to address inequitable health outcomes for Māori. The Māori Health Authority will be responsible for ensuring the health system is performing for Māori and will work with Iwi-Māori Partnership Boards, Māori health providers, iwi, hapū and Māori communities to understand Māori health needs across New Zealand (Figure 4). In each locality, partnerships between Iwi-Māori Partnership Boards, Health NZ commissioners and the wider community will ensure Māori voices are heard.[87]
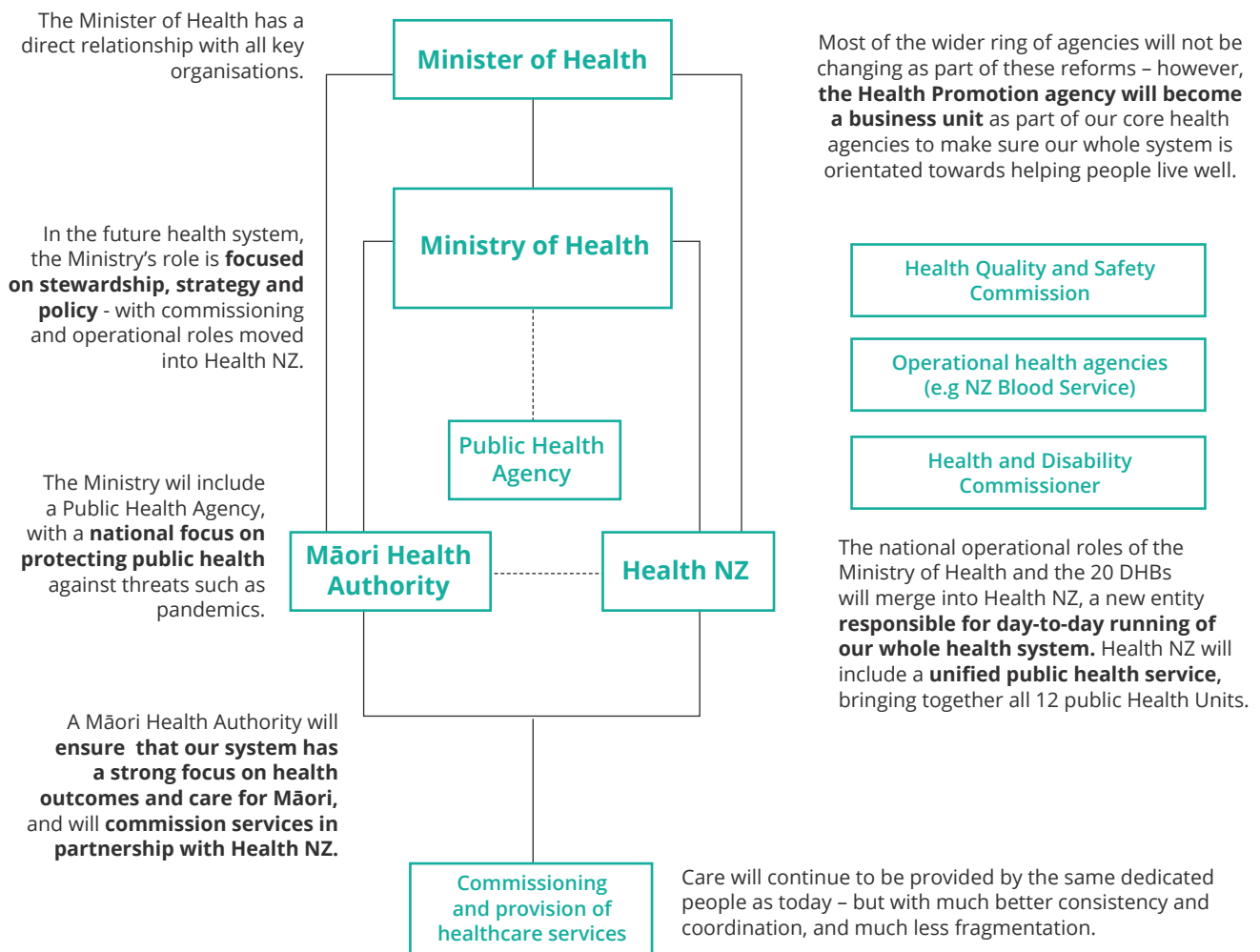
The Minister of Health has a direct relationship with all key organisations.

**Minister of Health**

Most of the wider ring of agencies will not be changing as part of these reforms – however, **the Health Promotion agency will become a business unit** as part of our core health agencies to make sure our whole system is orientated towards helping people live well.

In the future health system, the Ministry's role is **focused on stewardship, strategy and policy** - with commissioning and operational roles moved into Health NZ.

**Ministry of Health**

**Health Quality and Safety Commission**

**Operational health agencies (e.g NZ Blood Service)**

**Public Health Agency**

**Health and Disability Commissioner**

The Ministry wil include a Public Health Agency, with a **national focus on protecting public health** against threats such as pandemics.

**Māori Health Authority**

**Health NZ**

The national operational roles of the Ministry of Health and the 20 DHBs will merge into Health NZ, a new entity **responsible for day-to-day running of our whole health system.** Health NZ will include a **unified public health service**, bringing together all 12 public Health Units.

A Māori Health Authority will **ensure that our system has a strong focus on health outcomes and care for Māori,** and will **commission services in partnership with Health NZ.**

**Commissioning and provision of healthcare services**

Care will continue to be provided by the same dedicated people as today – but with much better consistency and coordination, and much less fragmentation.

**Figure 4. Overview of Māori Health Authority.**[88]

The Pae Ora (Healthy Futures) Act 2022 is the legislation to establish the Authority and sets out its functions, including specific reference to engaging with and reporting to Māori:

**20 Engaging with and reporting to Māori**

(1) The Māori Health Authority must—
  (a) have systems in place for the purpose of—
    (i) engaging with Māori in relation to their aspirations and needs for hauora Māori; and
    (ii) enabling the responses from that engagement to inform the performance of its functions; and
  (b) engage with relevant Māori organisations when—
    (i) jointly developing the New Zealand Health Plan with Health New Zealand; and
    (ii) advising on the GPs and any health strategy; and (iii) preparing its statement of intent and statement of performance expectations; and

  (c) report back to Māori from time to time on how engagement under this section has informed the performance of its functions.
(2) In this section, —
  **Māori organisation** includes (without limitation) iwi-Māori partnership boards, iwi and hapū authorities, rūnanga, trust boards, Māori health professionals' organisations, and representatives of whānau and hapū

It is also noteworthy to recognise section 6 of the Treaty of Waitangi Act 1975, which consists of significant elements (including tikanga) that will also strengthen the accountability of the Kāwana to Māori. This sets a precedent in the health sector that can also be directly applied to the housing sector and should be explored further regarding the WAI 2750 Housing Policy and Services Inquiry currently under way.

## MAIHI Whare Wānanga

The interpretation of Te Tiriti o Waitangi is a recent introduction for the housing sector, although already applied in health sector principles and policies. In the contemporary context of housing, Te Tiriti o Waitangi is recognised in housing legislation (including the Kāinga Ora – Homes and Communities Act 2019 and Urban Development Act 2020), plans and policies. The recognition of Te Tiriti o Waitangi is particularly evident in MAIHI Ka Ora, which stresses the new strategy is an "expression of the articles of Te Tiriti o Waitangi".[89] MAIHI Ka Ora (a renewal and refresh of the He Whare Āhuru He Oranga Tāngata Māori Housing Strategy) highlights the past failures of previous strategies that did not adequately engage with Māori and failed to include accountability measures and measurable outcomes. As a response, the adoption of the MAIHI Whare Wānanga under MAIHI Ka Ora is a model that reflects mutual and joint accountability. The MAIHI Whare Wānanga is essentially a partnership between Māori and the government to oversee the delivery of MAIHI Ka Ora – many of the parties are reflected in the MAIHI Māori Housing Strategy and conceptual framework. It appears the model has formed similarly to the three-house treaty model,[90] (see Webster and Cheyne) which is a treaty-based approach to partnership that includes many iwi/hapū and Māori organisations and Crown agencies who come together twice a year (to date). The exercise of tikanga Māori is evident in the process in the way the meeting has been structured. It also appears to be an inclusive forum to demonstrate across Aotearoa the extensive work that is taking place and how many Māori organisations are challenging mainstream processes and practices but also how they are working with government representatives. The Ministry of Housing and Urban Development recognises that MAIHI Whare Wānanga is a pathway for collaboration and consensus with partners that enables a process that focuses on transparency, trust, and transition.[91] Further, the Associate Minister of Housing (Māori Housing) Hon. Peeni Henare has specific responsibilities to the MAIHI Whare Wānanga, which provides great leadership to oversee and connect with government agencies and the Māori housing sector. Regarding the concept of accountability, this is a collective approach to implementation and accountability. This is a precedent reflecting an accountability approach for agencies concerning Te Tiriti o Waitangi. In addition, the MAIHI Ka Ora Implementation Plan outlines a clear pathway and series of actions within an accountability framework reflecting who will lead, design, and deliver solutions with targets and measures.[92] We recognise the innovative and influential approach to the Māori-Crown partnership in the Māori housing space thus far. However, without clear, robust, and transparent accountability mechanisms in place in the Kāwana as a Treaty partner identifying where accountability lies, our observation is that it is challenging to independently and publicly track and monitor whether the partners are fulfilling their accountabilities and responsibilities.

# Mutual accountability – Tangata Whenua and Kāwana

**4** | Tangata Whenua ⟷ Kāwana

The concept of mutual accountability is evolving and often adopted in various international and domestic contexts. The OECD defines mutual accountability as "a process by which two (or multiple) partners agree to be held responsible for the commitments that they have voluntarily made to each other".[93] Lo et al. define mutual accountability as "the presence and use of explicit enforcement mechanisms that allow partners to hold those who have made commitments (or still need to make commitments) responsible for following through. The element of mutuality is present when both sides of an agreement have made commitments and are responsible to each other for fulfilling their responses."[94] Eyben states that mutual accountability "is about strengthening mechanisms for regulating behaviour between autonomous parties"[95] and discusses the notions of power in relation to the idea of mutual responsibility and how that plays a significant role in relations and the wider system. The key concepts of partnership and relationships raised are particularly relevant as we shift the approach from accountability to responsibility, which is pertaining to an Ao Māori context and in Te Tiriti o Waitangi. Whitaker et al. assert that the best way to build mutual accountability is if it is taken jointly between parties and/or stakeholders. This is particularly evident when Māori and the Crown work together in collaboration, which is affirmed in Te Tiriti o Waitangi. Mutual accountability also means "that expectations are reciprocal".[96] Therefore, this reciprocal process and trust can be understood as whanaungatanga. Whitaker et al. also present a framework for mutual accountability:[97]

- Responsibility: Who is expected to carry out which actions or produce what results for whom?
- Discretion: Who is expected to invoke, interpret, or alter those responsibility expectations?
- Reporting: Who should provide what information to whom about how responsibilities are carried out?
- Reviewing and revising: Who is expected to use what information to make decisions about the future of the relationship?

The adoption of mutual accountability could be further explored in the housing sector and context between Tangata Whenua and the Kāwana. There is an opportunity to strengthen participation in the housing sector, which not only thinks about horizontal accountability between two parties but also thinks about vertical accountability and inclusivity of the communities that they serve. The mutual accountability framework presented by Whitaker et al. in tandem with the learnings from Lo et al. present opportunities to think about mutual accountability as a fundamental approach to designing and developing equity-oriented systems change. Centring equity in the review of accountability mechanisms will be critical to operationalising Te Tiriti o Waitangi. Nevertheless, officials may argue that they are undertaking this work to some degree (as part of the MAIHI Whare Wānanga, transfer of public housing management to iwi and so on). However, there could be a broader systematic approach across the wider housing sector that learns from mutual accountability processes.

## Ngā Taonga Whitiāhua me ngā Taonga Kōrero New Zealand Film Archive

An independent entity that was established in 1981 and is intended to represent the interests of all New Zealanders is Ngā Taonga Whitiāhua me ngā Taonga Kōrero, formerly New Zealand Film Archive. Since its establishment, the Archive has thrived, more recently absorbing material for archiving from two large entities, at which time its name was changed to Ngā Taonga.
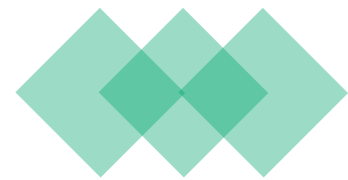
Aspects that may assist future structural changes for housing are the inclusion of all versions of the Treaty of Waitangi in its constitution and objective to fulfil the principles, aims and objectives expressed in the kaupapa and the principles expressed in Te Tiriti o Waitangi.

There are six Trustees and its constitution states that there "will at all times be three Trustees representing Māori interests, through their own heritage and/or their connections with iwi and iwi interests".[98] The purpose of the 50% Māori representation in the constitution was in recognition of the Treaty and tino rangatiratanga.[99] Knowledge of tikanga is one of eight skills sought of all Trustees.

The entity was established independent of the Kāwana as a Trust. A Friends of the Archive was set up to assist and raise funds, and the organisation is now recognised as the major film collecting agency and archive in Aotearoa New Zealand.[100]

While the Film Archive is a national-level legal trust and has recognised in its structure and constitution that it must have certain legal characteristics, the architects of the Film Archive set out to reflect the mutual responsibilities and accountabilities indicated in Te Tiriti through its representation, values, and knowledge, including that of tikanga.

## Tūpuna Maunga o Tāmaki Makaurau Authority
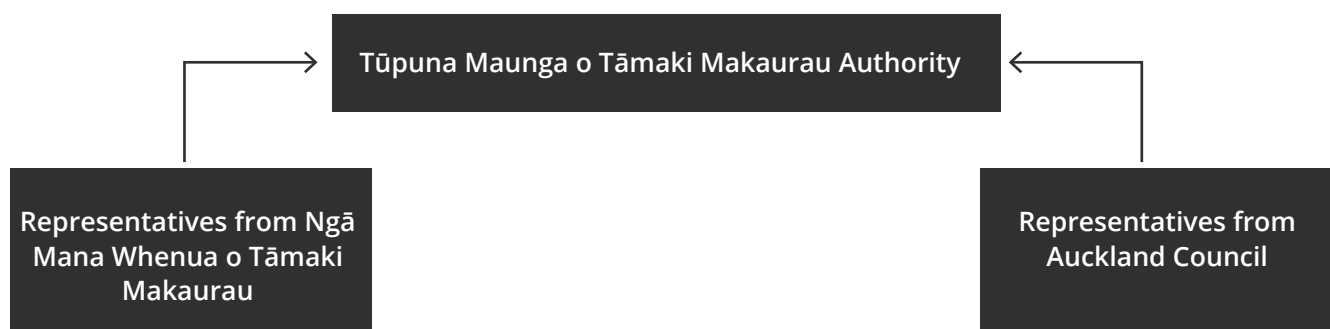


Tūpuna Maunga o Tāmaki Makaurau Authority
is the statutory authority established under Ngā
Mana Whenua o Tāmaki Makaurau Collective
Redress Act 2014 to co-govern the Tūpuna
Maunga. The Maunga Authority is comprised of
equal representatives from Ngā Mana Whenua o
Tāmaki Makaurau and Auckland Council, together
with Crown (non-voting) representation.[101]
Schedule 4 of the Act states accountability
measures in section 27:

**27 Reporting and audit**
(1)  The Maunga Authority must prepare an
     annual report for each financial year.
(2)  The report—
     (a) must include the dates and times of the
         Authority's meetings in the financial year;
         and
     (b) must include a summary of the
         Authority's activities in the financial year;
         and

(c) may include anything else that the
    Authority wants to put in it.
(3)  The Maunga Authority must—
     (a)  make copies of the report available—
          (i) free of charge, and for purchase at a
              reasonable price, at the offices of the
              Auckland Council; and
          (ii) free of charge on an Internet site
               maintained by or on behalf of the
               Authority or the Council; and
     (b) provide copies to the Auckland Council
         and the trustee.

In terms of tikanga Māori and responsibilities
and accountabilities, the Maunga Authority was
established by statute to perform at a regional
level. The different colour of this model reflects its
hybrid nature.

# International models of indigenous accountability

## Aboriginal and Torres Strait Islander Anindilyakwa Land Council

The Anindilyakwa Land Council is a case study example identified by the Australian Indigenous Governance Institute (AIGI), which outlines accountability with Aboriginal and Torres Strait Islanders. For instance, Aboriginal and Torres Strait Islander leaders sitting on governing bodies are accountable in many ways to their families, communities or nation, kin-based networks and laws, elders, senior men or women, managers, staff and members, funding bodies and business partners. These lines or horizontal and vertical accountabilities draw similar parallels to Māori organisations' obligations and responsibilities, which we can learn from our tuakana with regards to accountability and tikanga. The AIGI states: "'the meaning of accountability differs so much between Aboriginal and Torres Strait Islander people and non-Indigenous people, the governing bodies of organisations have to carefully balance their own modes of accountability and values with those of funding bodies and other stakeholders."[102]

There are many learnings we can draw from, especially in Te Tiriti context. For example, as aforementioned, Indigenous ideas about what accountability means can be very different to those of mainstream governments. In this case, AIGI describes Indigenous accountability as looking after their people, demand sharing and working for their people, whereas government accountability is grant reporting, service delivery and financial compliance. These two aspects of Indigenous and government accountability (Figure 5) can be viewed in the Aotearoa context through the rangatiratanga and Kāwanatanga spheres.
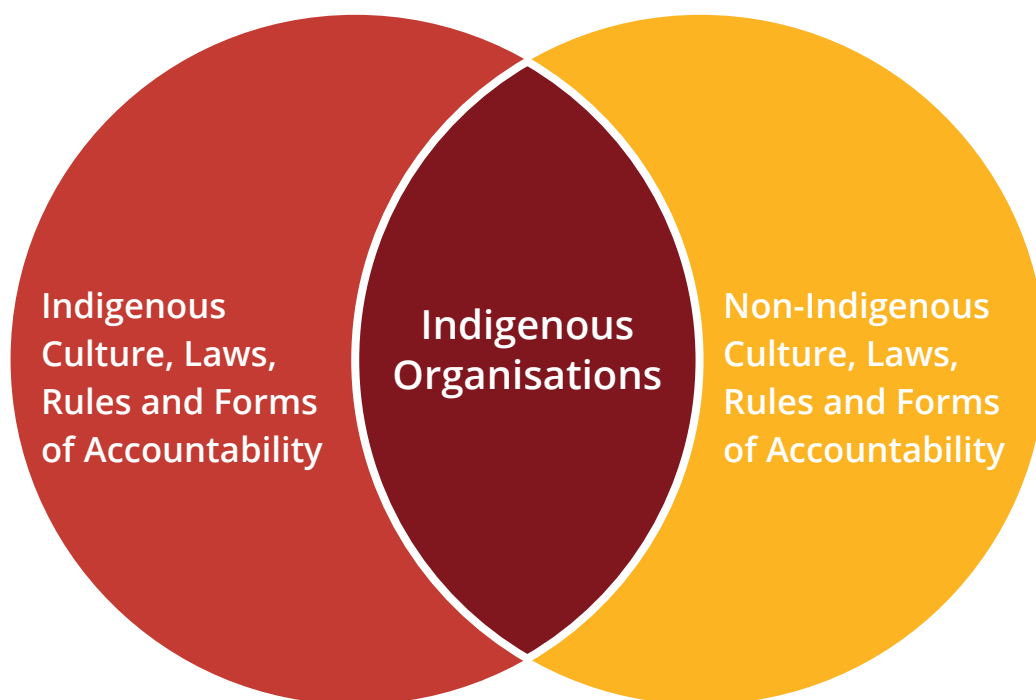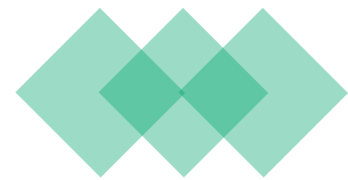


**Figure 5. The two-way accountability of Indigenous organisations.**[103]

In the case of the Anindilyakwa Land Council (ALC), it is an Aboriginal organisation operating under the Aboriginal Land Rights (Northern Territory) Act 1976 and as a statutory authority under the Commonwealth Authorities and Companies Act. The Anindilyakwa Land Council Code of Conduct highlights key accountability aspects:

To ensure accountability, you are required to:
• Continuously improve your performance in delivering services
• Utilise resources at your disposal in an efficient, responsible, and accountable manner
• Provide responsive, effective, and efficient services to stakeholders
• Deal with information gained as a result of your work only in accordance with the requirements of the ALC
• Maintain structures, systems and processes that work without excessive formality and that can adapt to changing demands
• Respect ALC's ownership of all of its funds, equipment, supplies, books, records, and property

• Seek approval prior to using ALC's equipment, property, or consumables for private purposes.[104]

The ALC is also subject to annual auditing under the Aboriginal Land Rights (Northern Territory) Act and the Public Governance, Performance and Accountability Act 2013. Interestingly, for the 2023 audit, the Australian National Audit Office proposes to examine whether the accountable authority is effectively governing its legislative functions under the Public Governance, Performance and Accountability Act and welcomes public submissions on the performance of ALC.[105] In this context, the accountable authority specifically references the CEO and the Chairman of the ALC Board. The ALC Board comprises clan representatives from the Indigenous clans within the ALC area and one community representative from each of the communities of Angurugu, Umbakumba and Milyakburra.[106]

## Ekiti, Ondo State Nigeria

A new emphasis on relearning governance structures that impact on communities' socio economic and cultural needs is taking place in West Africa, after coloniser-inherited structures of governance has been found to be eroding material advancement.[107] This is a return to pre-colonial local governance. In the urban and rural areas of Ekiti in Ondo State, Nigeria, communal kinship governance is now being applied to schools, their peace building, community banking cooperatives, security, roads, and kinships. The traditional governance centres on the Oba (king) and the council of chiefs, with accountability being to the council of chiefs. The community also engages in development associations for sustainable projects that are in partnership with the State authorities.

The checks and balances within their community governance enhance accountability as the central core is living in a state of independence but still part of the communal space and fabric. The diversity of both urban and rural parts of Ekiti, enables federal decentralisation while synthesising urban and rural resources for communal development. These elements constitute and reform colonised institutions to adapt to local development. The threats to traditional governance in Ekiti are linked to state and federal based institutions, westernised elites living within the community, foreign experts, institutions, and international funders.[108]

The relevance of this example of accountability is the application in a communal society in both rural and urban situations of a new (but pre-colonial) form of governance, accountability, and self-determination alongside state and federal governance structures. However, the community still retains their land, and houses are built on this land by families and handed on by local systems, so their situation is not as dire as that for Māori housing.
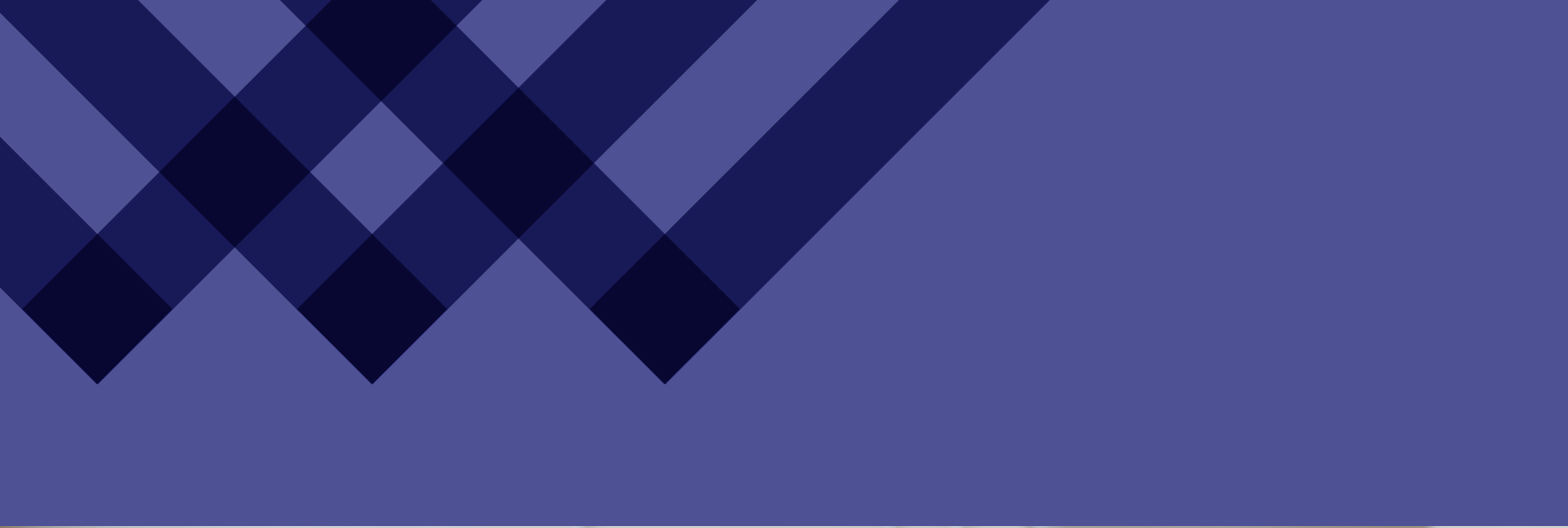
# Part Four: Te Tiriti analysis and discussion

# Tino rangatiratanga: Māori self-determination and responsibility to Māori

Accountability can be implemented, strengthened, or enhanced, acknowledging Māori understandings of accountability. Based on the learnings thus far, as noted in this discussion paper, we have identified key tikanga concepts that draw on the Māori notions of responsibility and accountability. The cultural principles, values and practices that are part of Te Ao Māori system of responsibility and accountability are performed through tino rangatiratanga, that is, Māori taking responsibility and accountability for Māori: self-determination. Those principles, values and practices are integrated and include tikanga, kaupapa, kawa, whakapapa and kaitiakitanga. Tino rangatiratanga is a key concept in Te Tiriti, so our analysis adopts a Tiriti framework.

## How could tino rangatiratanga apply to the housing sphere?

A "new theory of collective accountability" was urged 20 years ago along with "collaboration and collective accountability' at the local level, requiring "new institutional alignments and assignments of responsibility" at different levels.[109] However, apart from the call to strengthen accountability in the public sphere and to recently seek an understanding of accountability in Te Ao Māori sphere, little progress seems to have been made. Te Ao Māori accountability system includes positive responsibility as well as accountability as enforcement and rangatira as leadership and self-determination. Te Ao Māori approach to responsibility, obligation and accountability is collective decision making that is contextually relevant. To be effective, this collective system requires clarity of purpose and communication. The collective understanding of accountability operates at different levels and is not unlike the national responsibility and accountability urged in Aotearoa New Zealand as 'Team New Zealand' to combat the health pandemic in 2021. While such a system is operated by Māori, it is clear that collective opportunity for participation and decision making should be an essential factor for a new theory of collective accountability. Te Ao Māori collective approach to accountability through tikanga Māori is a participatory form of decision making. Therefore, a new theory of collective accountability must enable participation in decision making and, for Māori taking responsibility and accountability, enable the enactment of tino rangatiratanga. A new theory of collective responsibility and accountability could be developed for 'all of Kāwana' implementation, enabling innovation and a greater urgency to housing problem solving. Applying such a system could also be through the introduction of a Māori housing system that enables Māori to make decisions for Māori. However, particularly when acting in the public sphere, we note that, while accountability underpins representative democracy, when greater autonomy occurs to enable additional managerial responsibility, more stringent accountability for performance tends to occur. "Accountability cannot be seen in a vacuum", and while accountability is seen as part of checks and balances to ensure probity and transparency, there are a "complex array of formal systems and processes"[110] and accountability relationships. Accountability in the public sector involves many roles and tasks, and the concept is complex.
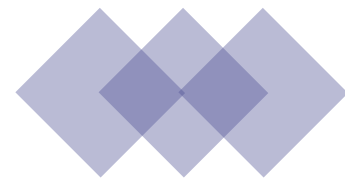
## Housing connecting whānau and whenua

An opportunity for the housing sector is to enable construction on Māori land, thus connecting whānau with their identity and whakapapa[111]. It is also an opportunity to seek ways to enable reconnection where tūrangawaewae links were severed through land alienation but the desperate need for housing within a rohe remains. There is also an opportunity to enable whānau, hapū and iwi to define the values that they seek represented in housing, whether it be through design for identity or expressed connection with the whenua, the health of the whenua and waterways and provision for future generations.

# Kāwanatanga: the role of the Kāwana

Kāwana constructive or effective accountability to Māori has been broadly absent or weak since the Treaty was signed in 1840. The key reason for that could be because, until the last 40 years or so, the Kāwana did not accept it had a responsibility to Māori except as a citizen of Aotearoa New Zealand, as with any other 'subject'. The introduction of the Waitangi Tribunal was intended to address Treaty grievances, but the Tribunal is advisory, not determinative. The Kāwana remains in a position of power but now does treat Māori as a partner in the Treaty, albeit an inferior one. The references to principles of the Treaty as well as partnership discussion, which tended to avoid direct reference to the Treaty text, have been noted. The Cabinet Office circular of 2019, to which the New Zealand Law Society alerted its members,[112] advised that, while the principles of the Treaty had previously been referenced, the Courts now take the text of the Treaty as the focus. From this, our understanding is that the Kāwana now recognises that concepts in Te Tiriti such as rangatiratanga are relevant to accountability, and as the Ministry of Health notes on its website,[113] Tiriti obligations apply to the services the department provides (although they are referenced still as Treaty principles). Accountability in terms of Te Tiriti, by implication, applies to all Kāwana departments and services, including housing. While Treaty obligations and accountability to Māori might be accepted, the Kāwana mechanisms for addressing constructive or effective accountability are generally enacted and then enforced through parliamentary legislation such as the Resource Management Act (now under review). This legislation and administration of it, as well as that of education and housing, are examples that have frequently failed Māori in terms of accountability. We have also discussed relationships as an important factor for Māori in ensuring effective accountability and suggest that this is the sphere where accountability is best addressed in Kāwanatanga accountability to Māori. A Kāwanatanga collective responsibility in terms of Te Tiriti as is recognised and customarily enforced in terms of tikanga Māori could be considered as an approach by the Kāwana in terms of its accountability to Māori, including for housing.

## Other accountabilities: mutual, individual and public accountability

Te Tiriti implies mutual accountability – all parties to Te Tiriti have accountability to each other for the performance of Te Tiriti. This has yet to be achieved and is a topic that merits further understanding of expectations. The main two factors to address are how this would be recognised and what communication channel or relationship mechanism would best suit the parties. Would reports to Parliament be appropriate? Would an annual wānanga system be effective and a way to consolidate relationships? The MAIHI Whare Wānanga is an example of mutual accountability but established regarding MAIHI Ka Ora. This wānanga system has been helpful for housing and could be considered useful for wider application. This discussion assumes that the Kāwana would address accountability in terms of, for instance, constructive or public accountability, and Te Ao Māori cultural system would be applied for matters that Māori had under Māori authority. The Office of the Auditor-General has a role in the audit of the effectiveness and efficiency of policy implementation and has a particular interest in public accountability[114]. Its contribution in this area is anticipated.

Individual accountability is not addressed in this discussion because the Kāwana role in Treaty matters is not as individual persons, and in Te Ao Māori, it is collective accountability rather than independent accountability that is addressed. However, we recognise that, especially within the Pākehā culture and Kāwana operations and management, independence is a norm and therefore independent decision making, action and accountability guided by ethics as well as laws will occur.

## Cultural competency

From the time of the writing of Te Tiriti, the ability of the Kāwana to see themselves in the shoes of their Tiriti partner has been hampered by an understanding that culture was not an aspect that needed to be addressed as assimilation was instead intended. Those opinions are changing, but many government departments and their staff are not yet culturally competent. Further, our education systems have failed Aotearoa New Zealand by omitting accurate information of our founding history so that many Tangata Tiriti have a very limited understanding of land confiscations and the basis of Te Tiriti. These inadequacies are a barrier to adequate recognition of the text of the Treaty and are shared by many, but hamper good faith communications, provision of appropriate services and accountability.
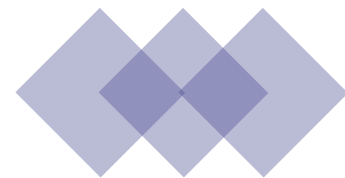
# Ōritetanga: equity, responsibility, and accountability

Ōritetanga means equality or the equal treatment of people, from the Māori word ōrite, meaning the same or even. Article 3 of Te Tiriti contains a provision guaranteeing equality between Māori and Tangata Tiriti. The radical disparity between Māori and Tangata Tiriti in housing indicates that this provision is not fulfilled. This inequality has been highlighted in recent literature[115] and Kāwana attention given to building more houses, but inequality remains.

## Emergency, social housing and dependency

The emergency housing sector is the area where the lack of accountability to Māori for housing over many years is most evident. Kāwana policy has changed from some six years ago when no funding was allocated for emergency housing despite evidence of a housing crisis for Māori. The increased rentals and limited availability of social housing penalised those with least resources, mainly Māori. The response of the Kāwana to provide motel accommodation as a short-term solution has become a disturbing longer-term response for families, many of whom are Māori who lack security of tenure, support of close-by extended whānau and ongoing stable schooling and other facilities such as good health outcomes. This alone demonstrates the extreme challenge of moving to an equitable system of housing. Funding spent on motels cannot be recovered as no capital asset has been achieved.

The social housing sector is also struggling although Māori housing providers are gaining community housing provider (CHP) registration and seeking the opportunity to provide greater security, which responds to the Māori housing need. Many whānau will never have the opportunity to live in their own home for numerous reasons, including the lack of financial capability and a history of bad debt. Māori CHPs can make a cultural difference to their dependent situations through wraparound services, accepting accountability for housing in place of the Kāwana.

For those whānau/hapū/iwi/trusts that, with financial capability, are developing capacity to seek first-home ownership and move from a dependent situation, there are many barriers that the Ministry of Housing and Urban Development along with Te Puni Kōkiri and Kāinga Ora are working to address. The funding available in comparison to the need for finance is limited, and hence a measure of accountability is the supply of housing for Māori. This is a 'cap in hand' relationship with a Kāwana department and not rangatiratanga as agreed in Te Tiriti[116].

# Wairuatanga: wairua and spirituality

Wairuatanga is underexplored in this discussion paper. Wairuatanga (often referred to as Article 4) in Te Tiriti o Waitangi refers to the active protection of Māori beliefs and values by ensuring inclusion, recognition, and respect for Te Ao Māori, including tikanga, kawa, reo and mātauranga Māori. This is important in the housing sphere where kāinga link to whenua and identity for Māori.

Tikanga and wairuatanga are critical in understanding Māori notions of accountability. Te Aka, the online Māori dictionary, defines wairuatanga as spirituality. The notion of spirituality is particularly important in Te Ao Māori with reference to tikanga, customary practices and traditions. At a micro scale, we practise tikanga through karakia or waiata before/during hui or significant events – Berghan et al. (2017) state that they "provide space for spirit".[117] At an organisational and management level, a study by Craig et al.[118] found three core Māori values that were important to accountability reporting objectives and practices of which wairuatanga was identified: spirituality (wairuatanga), intergenerationalism and restoration (whakapapa) and governance, leadership and respect (mana and rangatiratanga). At a national level in the statutory context, wairuatanga has not necessarily been widely explored in the concept of accountability mechanisms, but it has been adopted once in statute within the Ngaa Rauru Kiitahi Claims Settlement Act 2005 where wairuatanga is defined in Schedule 12:

> The relationship between Ngaa Rauru Kiitahi and Toopuni is expressed in waiata, koorero, and karakia. Karakia, in particular, have always been used when harvesting kai. Wairua impacts upon the way in which individuals conduct themselves around kai, the harvesting of kai and the tikanga around the eating of kai.

The recognition of wairuatanga in statute may be an opportunity to explore further the development of accountability mechanisms within the housing sector for Māori. Moreover, if we understand tikanga as the Māori value and wairuatanga as the application, as described by Durie,[119] within the contemporary context, we can assume that those who may be appointed to the potential accountability mechanism and model should also have a deep knowledge and understanding of tikanga.

# Part Five: Conclusion and recommendations

This discussion paper commenced with the role of Te Kāhui Tika Tangata Human Rights Commission and its inquiry into strengthening accountability and participation in the housing sector and, in doing so, seeking a better understanding of what accountability means in Te Ao Māori. The central place of Te Tiriti o Waitangi and its interpretation in the housing sector in legislation, plans, strategy, and policies are recognised. Te Tiriti and accountability discussions draw attention to accountability of Māori to Māori within the rangatiratanga sphere. The mechanism that may best operate in the relational sphere between the Kāwanatanga and Rangatiratanga is not addressed in any detail to tease out the deficit of accountability in the housing sector and institutional arrangements. This is an area where further thinking and discussion is recommended.

Tikanga Māori as an integrated and long-term collective accountability system for Māori to Māori is elaborated as effective accountability. Models diagram the various accountabilities with examples that illustrate the models. Tino rangatiratanga is highlighted as the outcome expected and sought by Māori. The recent example of the new Māori Health Authority and accountability structures are considered as the basis for developing options and their strengths and weaknesses with respect to effective accountability for the Māori housing sector noted.

A mechanism for addressing accountability that has been used at the regional level is that of Treaty audits of local government compliance with Te Tiriti responsibilities. This mechanism is an opportunity to consider on a short-term basis for the Kāwana to undertake for the housing sector in anticipation that an effective Māori housing entity managed by and for Māori is the goal. It would provide helpful information as preparation for change. Although the Office of the Auditor-General already has an audit function for the Kāwana, its role is restricted to policy implementation and does not appear to have been undertaken for housing using the text of Te Tiriti, including tino rangatiratanga, as its yardstick. Such an audit system would enable exploration of the gaps in the housing structure, funding and supply and comparative response for Māori and Pākehā. It could identify what strategies and policies are currently enabling accountability, which in turn might be replicated and adopted by a new entity, and where performance requires correction. However, the Kāwana has not been able to demonstrate over the last 30 years (at least) effective or constructive accountability to Māori for decent housing, and the situation has been steadily worsening. A separate independent Māori housing entity demonstrating rangatiratanga through this role could start to address the dire deficit in funding and performance before the problem gets beyond the abilities of the Kāwana.

Housing with appropriate funding, planning and construction training and a rapid increase in sector capability at all levels that is led and managed by Māori for Māori would be an appropriate Tiriti response as well as enable a response to wairuatanga as is addressed in Article 4. There are several options for such an outcome, discussed below. We note our finding that, with increasing autonomy, public scrutiny of responsibility and accountability is likely to increase but that this could enhance rather than diminish performance.

We explore the following models and institutional arrangements for further discussion.
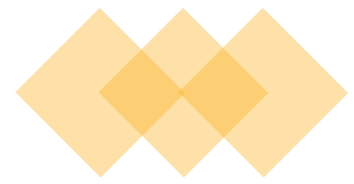
# Model A: A Māori Housing Authority
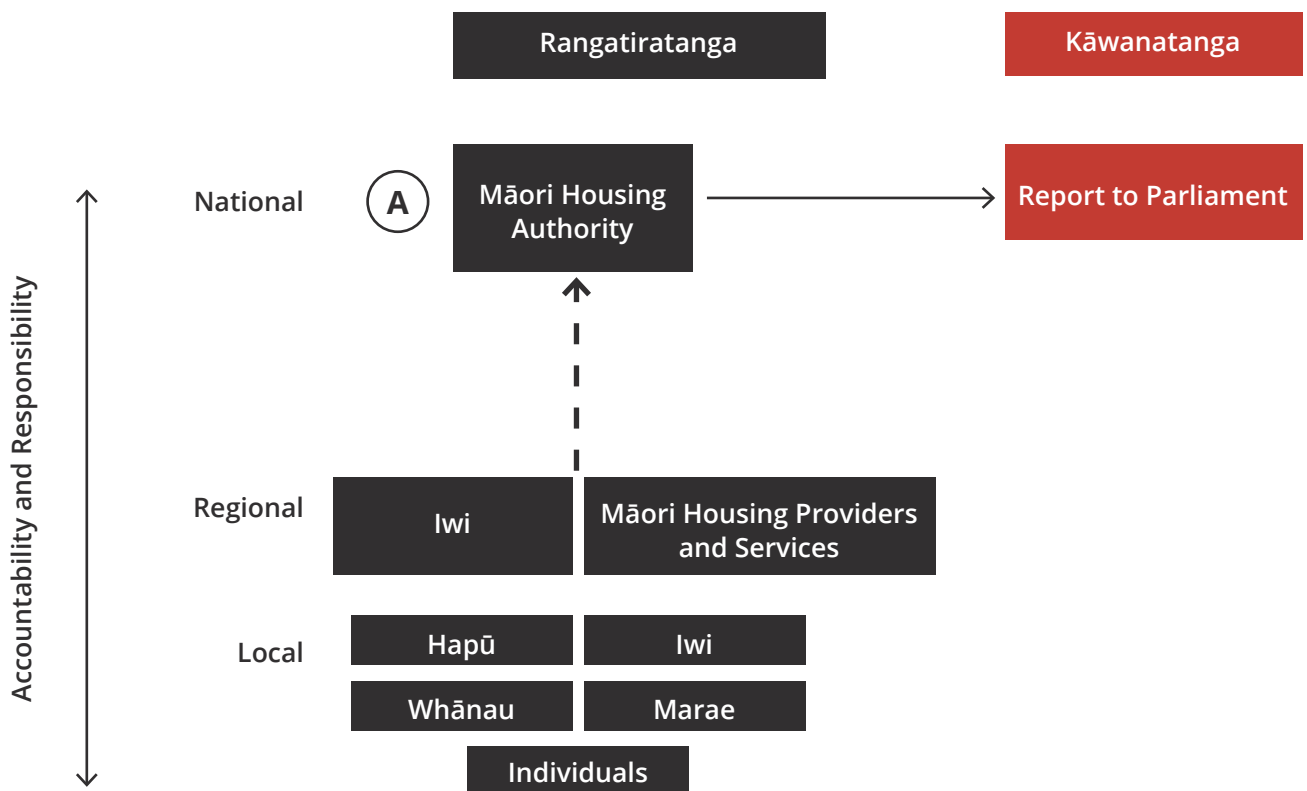


A Māori housing entity is recommended, and the model options for this should all be considered. The structural relationships for this entity and how they align with Te Tiriti and rangatiratanga as well as Te Ao Māori more generally should be carefully considered with respect to each option. A key aspect of Te Ao Māori is the interconnection and integration of cultural principles. This recognition is also fundamental to future decision making. A Māori Housing Authority is recommended as an option that potentially follows the model of the Māori Health Authority. Such a model could take responsibility for all housing for Māori, including emergency, social housing, support of CHP entities and construction. Adopting the new Māori Housing Authority model would provide the following:

- Māori making decisions for Māori - tino rangatiratanga.
- Responsibility and accountability.
- Location of Māori skills in one entity rather than spread thinly through multiple entities.
- Culturally appropriate outcomes including the interrelationship of cultural principles and values.

- Development of a broad range of sector skills including planning, economic management, project management, and construction.
- Focus on a key issue which most affects Māori.
- An independent Māori entity reporting directly to Parliament.
- A national level kāhui as an independent entity based on Te Tiriti o Waitangi.
- A regional and local housing system led by hapū/ iwi, using auditing processes to demonstrate accountability.

  > With audit and measurement … to build relationship, mana, and sustainability. Responsibility to iwi, hapū and collective responsibility/tino rangatiratanga.

- Independent Māori entity (cf Māori Health Authority) with an independent Māori voice.

Collective responsibility and accountability are the tikanga Māori framework.

A Māori-led housing entity would enable tino rangatiratanga in the housing sector.

- Māori leaders could identify the steps to be taken or the most constructive model.
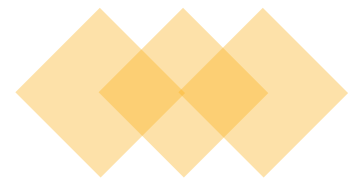
- Research required on interface between the Kāwanatanga and rangatiratanga sphere.
- Safeguard independence of entity using statutory mechanisms.
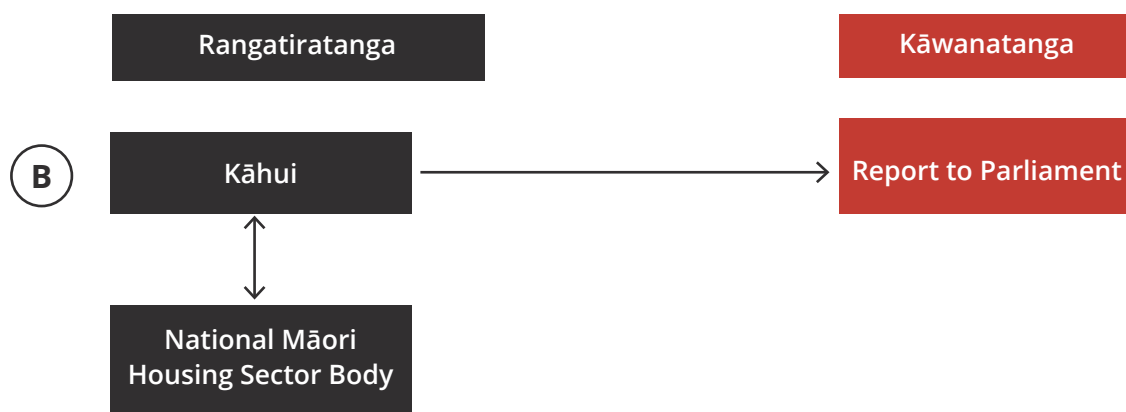
**Strengths of this model:**
- Māori decision making by and for Māori.
- Rangatiratanga.
- Culturally appropriate housing that could enhance identity and well-being.

**Weaknesses and risks of this model:**
- Lack of independence from the Kāwana: the Māori Health Authority reports to a Minister, which does not achieve tino rangatiratanga.
- Funding – if the entity is 'starved' and unable to carry out its functions.
- Different perceptions and measures of success and accountability from the Kāwana and likely increasingly stringent accountability mechanisms the greater the autonomy.

# Model B: An independently appointed kāhui

| | | |
|---|---|---|
| **Rangatiratanga** | | **Kāwanatanga** |
| **B** **Kāhui** | ────────────────▶ | **Report to Parliament** |
| ↕ | | |
| **National Māori Housing Sector Body** | | |

A second model could be an independently appointed kāhui as representatives of the Māori housing sector that reports to Parliament. This model would enable the following:

- Māori making decisions for Māori – tino rangatiratanga.
- Establishment of agreed kawa – what is not negotiable in leadership, structure, and function.
- Responsibility and accountability.
- Location of Māori skills in one entity rather than spread thinly through multiple entities.
- Culturally appropriate outcomes.
- Development of a broad range of sector skills, including planning, economic management, project management and construction.

- Less bureaucratic battles such as those faced by kōhanga reo through Ministry of Education oversight.
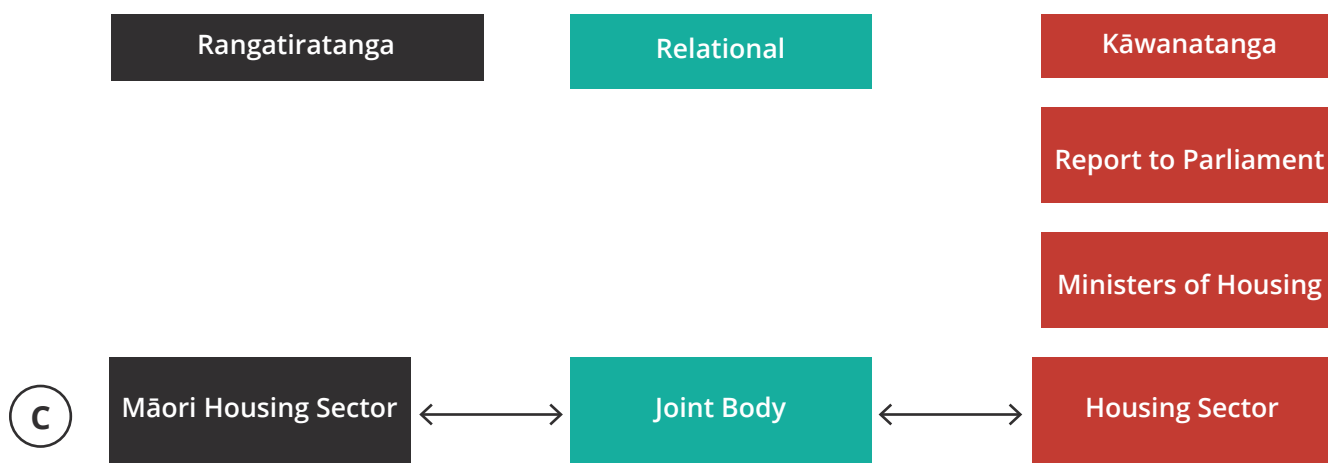- Focus by the Māori housing advocate on a key issue that most affects Māori through strategic oversight.

**Strengths of this model:**
- Response to Te Tiriti as tino rangatiratanga.
- Integrated delivery of housing.

**Weaknesses and risks of this model:**
- The risk of inadequate funding.
- Opposition from the current housing entities.
- Stringent accountability systems.

# Model C: A mutual accountability mechanism

| Rangatiratanga | Relational | Kāwanatanga |
|---|---|---|
| | | **Report to Parliament** |
| | | **Ministers of Housing** |
| **C** **Māori Housing Sector** ⟷ | **Joint Body** ⟷ | **Housing Sector** |

A third optional structure might be a kāhui or entity independent of the Kāwana with mutual accountabilities, following a similar governance and operations model to Ngā Taonga Whitiāhua me Ngā Taonga Kōrero. Such a model has been successful for the Film Archive over 40 years and needs further development for a housing function.

**Strengths of this model:**
- Māori autonomy in the housing sector – tino rangatiratanga and Te Tiriti alignment.

- Development of an effective relationship body that could enhance the future for both Tiriti partners.
- A response in the housing sector that aligns with Māori cultural values.

**Weaknesses and risks of this model:**
- Public perception of lack of transparency.
- Inadequate funding.
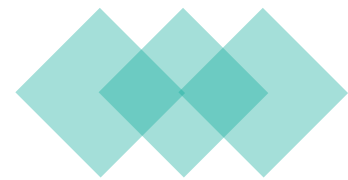- Increased stringency of accountability and therefore increased bureaucracy.
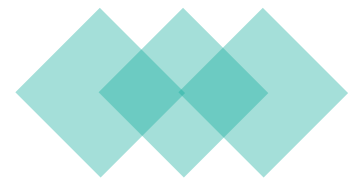
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